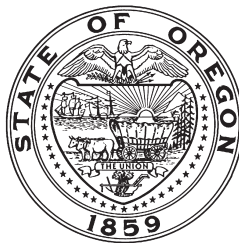


OREGON BULLETIN

Supplements the 2005 *Oregon Administrative Rules Compilation*

Volume 44, No. 9
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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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CHANCE TO COMMENT ON... RECOMMENDED REMEDIAL ACTION FOR THE NU-WAY OIL SITE PORTLAND, OREGON

COMMENT PERIOD: September 15 through October 17, 2005
PROJECT LOCATION: 7039 N.E. 46th Avenue, Portland, Oregon
PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-0100, the Oregon Department of Environmental Quality (DEQ) invites public comment on the "Recommended Remedial Action" for the Nu-Way Oil Site in Portland, Oregon.

HIGHLIGHTS: DEQ has completed the remedial investigation and feasibility study for the Nu-Way Oil site under the Orphan Site Program. Soil, sediment and groundwater contamination attributed to past use of the property are present on the property. Nu-Way Oil operated a used oil re-refining facility at the site from 1935 to 1987. The site is located in Northeast Portland on the Whitaker Slough, an arm of the Columbia Slough. Acid sludge, wastewater, and spent clay filtrate were disposed on the property in an unlined lagoon. In addition to the contamination placed in the lagoon area, oil waste inundated the site soil during site operations. In November 1989, DEQ initiated investigation and cleanup measures at the site to address significant contamination at the property from Nu-Way Oil's operations. Since that time, DEQ has undertaken interim cleanup actions at the site to address imminent threats to human health, welfare and the environment including removal of process equipment, excavation and removal of roughly 12,500 tons of oil sludge from the unlined lagoon, and installation of an interceptor trench between the lagoon and other operational areas and the Whitaker Slough to capture and recover oil waste floating on the water table. Subsequent investigations were conducted to determine the extent of contamination on site and adjacent properties, and impacts to sediment in Whitaker Slough adjacent to the property.

The primary contaminants of concern identified at the site both in soil and sediment include lead, polychlorinated biphenyls, and petroleum hydrocarbons. A large portion of the property is impacted by residual petroleum product found in the subsurface soils. The primary human health risks identified for the site are associated with direct contact exposure to soil, ingestion of fish caught in Whitaker Slough and potential future exposure to groundwater during construction work. Significant risks to wildlife, sediment-dwelling organisms and fish have also been identified through direct contact exposure to contaminated soil, and sediment in Whitaker Slough next to the site.

The recommended remedial action includes removal and off-site disposal of hot spot soil, dredging of hot spot sediments from Whitaker Slough with on-site placement in the upland lagoon and capping the remaining upland residual soil contamination with a clean soil cap. Prior to placement of the soil cap, the steep bank along the Whitaker Slough would be cut to facilitate placement of the soil cap. New vegetation would then be planted to restore the riparian habitat along the Slough. The recommended remedy would also include continued groundwater monitoring, institutional controls and contingency measures.

HOW TO COMMENT: DEQ's Staff Report dated September 2005 and other project file information are available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call: 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. The Staff Report will also be available at the DEQ website: <http://www.deq.state.or.us/nwr/index.htm>. Please send written comments to Deborah Bailey, Project Manager, at the address listed above, or via email at bailey.deborah.a@deq.state.or.us. The public comment period will start on September 15, 2005 and written comments must be received no later than 5:00 p.m., Monday October 17, 2005. DEQ will hold a public meeting to receive verbal comments if requested by ten or more people or by a group with 10 or more members.

Please notify DEQ of any special physical or other accommodations you may need due to a disability, of any desired language accommodations, or if you need copies of written materials in an alternative format (e.g., Braille, large print). To make these arrangements, contact DEQ's Office of Communications and Outreach at 503-229-5317.

THE NEXT STEP: DEQ will consider all public comments received by October 17, 2005 and the Regional Administrator will make a final decision after consideration of these public comments.

CHANCE TO COMMENT ON... RECOMMENDED NO FURTHER ACTION FOR THE FORMER TOSCO/UNOCAL BULK PLANT NO. 0193, ESTACADA, OREGON

COMMENTS DUE: October 1, 2005

PROJECT LOCATION: 453 Southwest Second Avenue, Estacada, 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 a proposed "No Further Action" cleanup decision for the Former Tosco/Unocal Bulk Plant No. 0193 in Estacada, Oregon.

HIGHLIGHTS: DEQ has completed an evaluation of the risk-based corrective action plan for the Former Tosco/Unocal Bulk Plant No. 0193 completed by the former property owner (Conoco-Phillips Company) under DEQ's voluntary cleanup program. Soil and groundwater contamination, attributed to past use of petroleum products used in bulk fuel operations, was found at the site during site investigations. From 1982 through 2002, several site investigations and remedial activities were conducted at the site. In 1994, an air sparge/soil vapor extraction (AS/SVE) system was installed to address several significant documented petroleum releases in the northwest corner of the site. From 1996 through 2001, numerous soil borings and groundwater monitoring wells were completed throughout the site which revealed the presence of petroleum hydrocarbons including polycyclic aromatic hydrocarbons (PAHs); benzene, toluene, xylenes, and ethyl-benzene (BTEX); and lead in both soils and groundwater.

A risk-based corrective action plan was submitted to DEQ in 2004 to evaluate residual contamination in soil and groundwater at the site. The evaluation concluded that there is no significant risk to human health from residual soil and groundwater contamination at the site based on a comparison of site concentrations to DEQ risk-based concentrations. The results of this evaluation is based on the absence of groundwater use in the locality of the site and that residual groundwater contamination at the property would not move a significant distance from the property or to the Clackamas River, which is source of drinking water for the City of Estacada. DEQ also concluded that there were no significant ecological risks posed by the remaining soil contamination at the property due to the absence of significant ecological habitat.

DEQ has made a preliminary determination that cleanup measures undertaken by Conoco-Phillips of petroleum products released at the site during historical petroleum bulk plant operations are complete and site is currently protective of public health and the environment, and requires no further action under the Oregon Environmental Cleanup Law, ORS 465.200 et seq., unless new or previously undisclosed information becomes available.

DEQ's decision does not apply to existing infrastructure, which includes above ground fuel storage tanks and associated piping that may contain residual petroleum products and sludge, which was not a subject of the investigation and cleanup actions undertaken by ConocoPhillips. Should this facility be redeveloped for uses other than a bulk petroleum storage facility, the tanks and associated piping will need to be properly decommissioned and residual petroleum

OTHER NOTICES

um and sludge managed and disposed of off-site in accordance with applicable solid and hazardous waste regulations.

HOW TO COMMENT: DEQ's project file information is available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call: 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. Please send written comments to Chris Kaufman, Project Manager, at the address listed above or via email at kaufman.chris@deq.state.or.us by 5 p.m., October 1, 2005. DEQ will hold a public meeting to receive verbal comments if requested by ten or more people or by a group with 10 or more members.

Please notify DEQ of any special physical or other accommodations you may need due to a disability, language accommodations, or if you need copies of written materials in an alternative format (e.g. Braille, large print, etc). To make these arrangements, contact DEQ's Office of Communications and Outreach at 503-229-5317.

THE NEXT STEP: DEQ will consider all public comments received by the October 1, 2005 deadline and the Regional Administrator will make a final decision after consideration of these public comments.

CHANCE TO COMMENT RECOMMENDATION FOR DELISTING FROM THE CONFIRMED RELEASE LIST AND INVENTORY

COMMENTS DUE: September 30, 2005

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

PROPOSAL: Pursuant to ORS 465.230 and Oregon Administrative Rules (OAR) 340-122-077 through 340-122-079, the Department of Environmental Quality (DEQ) requests public comment on its recommendation that the Trus Joist engineered wood products manufacturing facility in Junction City, Oregon be de-listed from the Department's Confirmed Release List and Inventory.

HIGHLIGHTS: DEQ determined on June 22, 2005 that no further investigation or cleanup action is required for residual groundwater contamination at the Trus Joist engineered wood products manufacturing facility in Junction City.

The Trus Joist 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.

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 de-listing 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

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.

OPPORTUNITY FOR PUBLIC COMMENT RECOMMENDATION FOR NO FURTHER ACTION JONES PROPERTY, ALBANY

COMMENTS DUE: September 30, 2005

PROJECT LOCATION: 1177 Scrael Hill Road, Albany, Oregon 97321, Tax Lot 6, Linn County Tax Map 11.3W.11

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 a release of waste oil and diesel on the subject property.

HIGHLIGHTS: An environmental investigation and removal action were performed at the Jones property for petroleum hydrocarbon contamination related to a pressure washing facility in the northern portion of the Site, concern over used oil storage at the northeast end of the shop building, and waste oil disposal at the south end of the property. Contamination was detected in only one area of the property, leading to excavation of about 11 tons of soil for disposal at an approved landfill.

The property was screened for human health and ecological risks from exposure to residual petroleum hydrocarbon contamination in 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 residual petroleum hydrocarbon contamination on this property.

Therefore, DEQ has recommended that no further investigation or remediation is needed for environmental impacts at the Jones property.

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.

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

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.

OPPORTUNITY FOR PUBLIC COMMENT RECOMMENDATION FOR NO FURTHER ACTION FORMER SUPRA PRODUCTS PROPERTY, SALEM

COMMENTS DUE: September 30, 2005

PROJECT LOCATION: Former Supra Products property, 2611 Pringle Road, Salem, currently occupied by the Willamette Education District, Tax Lot 1000, Marion County Tax Map 73W.35C

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 a residual petroleum hydrocarbons and solvent chemicals released on the subject property.

HIGHLIGHTS: A removal action and several investigations have been performed at the former Supra Products property to address residual petroleum hydrocarbon and solvent chemicals found in soil and/or groundwater. These chemicals appear to have originated from a 5,000 gallon diesel underground storage tank and a scrap metal storage area on the property. Decommissioning of the UST occurred in 1992, followed by removal and off-site disposal of contaminated soil.

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Groundwater sampling from site monitoring wells indicates that shallow groundwater may be locally contaminated by solvent chemicals, including: 1,1,1-trichloroethane (TCA) and 1,1-dichloroethene (DCE). The low concentrations of detected chemicals are well below cleanup action levels, and they appear to be declining over time.

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.

Therefore, DEQ has recommended that no further investigation or remediation is needed for environmental impacts at the former Supra Products property.

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.

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

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.

NOTICE FOR COMMENT ON PROPOSED CLEANUP ICN PHARMACEUTICALS SITE

COMMENTS DUE: September 30, 2005

PROJECT LOCATION: 6060 NE 112th Ave, Portland, OR

PROPOSAL: As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on the proposed no further action determination for contaminated groundwater at the ICN Pharmaceuticals site.

HIGHLIGHTS: Between 1961 and 1980 United Medical Laboratory and subsequently ICN used the property at 6060 NE 112th Ave. as a mail-order clinical laboratory. ICN Pharmaceuticals shut down the laboratory in 1980 and demolished buildings during 1993 and 1994. DEQ investigations at the site revealed high concentrations of volatile organic contaminants such as trichloroethene, dichloroethene, vinyl chloride, benzene and toluene in groundwater in the vicinity of a former dry well located on the property.

Cleanup of contaminated groundwater at the site began in May 2000 using a six-phase electrical resistive heating and vapor extraction process to address trichloroethene, dichloroethene and vinyl chloride which appeared to be present as separate phase solvents (dense, non-aqueous phase liquids or DNAPLs). This technology works by raising the temperature of the impacted soil and groundwater until the contaminants volatilize. The resulting steam and volatilized contaminants are collected in a vapor collection system. The steam vapors are subsequently condensed, with the air stream discharged directly to the air, and the water collected into storage tanks, prior to discharge to the City of Portland sewer system. In November 2001, DEQ concluded that six phase heating had successfully removed most of the groundwater contamination. Heating was discontinued at this time. The existing treatment system vents and wells were then used to inject air into the groundwater with the intent of improving conditions for biodegradation of the remaining contaminants.

Groundwater monitoring data collected during and after cleanup indicates that the cleanup technologies were successful in reducing groundwater contamination to levels that are protective of human

health and the environment. Remaining levels of contaminants are generally below EPA drinking water standards, with the exception of a few locations. These exceedances, however, are localized, decreasing, and migration to underlying aquifers that may be used for drinking water is not expected. DEQ has therefore concluded that no additional site remediation is necessary beyond periodic monitoring to confirm contaminant trends.

HOW TO COMMENT: The No Further Action recommendation memo and complete Administrative Record for the project is available for public review at DEQ's Northwest Region Office in Portland. To schedule an appointment to review files in call (503) 229-6729. The DEQ Project Manager is Jennifer Sutter, (503) 229-6148. Written comments should be sent to the Project Manager at the DEQ, Northwest Region, 2020 SW 4th Ave., Portland, OR 97201 or sutter.jennifer@deq.state.or.us by September 30, 2005.

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

PROPOSED CONDITIONAL NO FURTHER ACTION INTERFOR PACIFIC GILCHRIST MILL KLAMATH COUNTY, OREGON

COMMENTS DUE: October 3, 2005

PROJECT LOCATION: One Sawmill Road, Gilchrist, 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 Interfor Pacific Gilchrist Mill site located at One Sawmill Road in Gilchrist, Oregon.

HIGHLIGHTS: The facility has operated as a sawmill from approximately 1939 until the present. The site currently includes a sawmill, dry kilns, planer, truck shop, power house, fuel house, and office buildings. Soil and/or groundwater petroleum contamination has been identified on the site in the vicinity of former petroleum Underground Storage Tanks (USTs) and Above Ground Storage Tanks (ASTs) in the truck shop area, the truck shop wash pit, the former petroleum contaminated soil treatment area, and the former drum storage area.

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; and 2) by placement of institutional controls on the property. The institutional control consists of deed restrictions with the following restrictions: 1) no beneficial use of contaminated groundwater; 2) no residential use; and 3) 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 John Dadoly at (541) 278-4616. Written comments should be received by October 3, 2005 and sent to John Dadoly, 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.

RIVERPLACE PARCEL 8 ENVIRONMENTAL CLEANUP ALTERNATIVES ANALYSIS NOW AVAILABLE FOR PUBLIC REVIEW AND COMMENT

COMMENTS DUE: October 3, 2005

PROJECT LOCATION: Parcel 8, located in Portland's RiverPlace community, is a 1.11 acre property bounded by SW River Drive and

OTHER NOTICES

SW River Parkway, Parcel 1 (“The Strand”) and a private road on the east.

PROPOSAL: The Portland Development Commission (PDC) has received a \$200,000 grant from the Environmental Protection Agency to assist with cleanup of asbestos debris that is currently buried on the property. An Alternatives Analysis for Asbestos Remediation and a plain language fact sheet (“Parcel 8 Clean-up Fact Sheet”) that explains the environmental cleanup alternatives are now available for public review.

HIGHLIGHTS: In 1990–91, demolition of the former Lincoln Steam Plant revealed that portions of the concrete demolition debris were coated with asbestos-containing paint. At that time, the debris was managed in accordance with the Department of Environmental Quality (DEQ). These measures were—and are—sufficient as long as the debris is not disturbed. However, goals for the North Macadam Urban Renewal Area include cleanup and redevelopment to revitalize the waterfront and enhance Portland’s urban environment. In particular, the proposed plan for Parcel 8 includes construction activi-

ty that will disturb the buried debris. Therefore the buried debris must be addressed in a manner compliant with the DEQ before redevelopment can occur.

HOW TO REVIEW: The Alternatives Analysis and plain language fact sheet are available for public review at the Portland Development Commission, located at 222 NW Fifth Avenue, Portland, OR 97209, and on the web at www.pdc.us/ura/sowa_n-macadam.asp. The DEQ project file is available for public review at DEQ’s Northwest Region office, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201. To schedule an appointment contact Dawn Weinberger at 503-229-6729.

HOW TO COMMENT: DEQ and PDC invite public comments on the Alternatives Analysis that has been developed for the environmental cleanup. Written comments should be submitted to the PDC project manager, Kia Selley, at 222 NW Fifth Avenue, Portland, OR 97209 or via email to selleyk@pdc.us, by October 3, 2005. Ms. Selley can also be reached for questions at (503) 823.0113, and DEQ project manager, Tom Roick, can be reached at (503) 229-5502.

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.

**Auxiliary aids for persons with disabilities are available upon advance request. Contact the agency Rules Coordinator listed in the Notice information.*

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Board of Geologist Examiners
Chapter 809

Stat. Auth.: ORS 672.555, 672.575 & 672.705
Stats. Implemented: ORS 672.555(2)(c), 672.575 & 672.705(1)
Proposed Amendments: 809-010-0001, 809-040-0002, 809-040-0006, 809-050-0010

Last Date for Comment: 9-21-05

Summary: The fee increase for the ASBOG fundamental examination was approved by action at the December 7, 2004, Board Meeting. This increased fee represents the actual ASBOG charge to the Board to provide the examination.

By action at the March 8, 2005 Board meeting, the Oregon Geology examination was removed as a requirement for registration as a geologist in Oregon effective June 1, 2005. The above amended rules will carry out this decision of the Board.

Rules Coordinator: Susanna R. Knight
Address: Board of Geologist Examiners, 1193 Royvonne Ave. SE, #24, Salem, OR 97302
Telephone: (503) 566-2837

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Board of Medical Examiners
Chapter 847

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.265 & 677.510
Proposed Amendments: 847-050-0029
Last Date for Comment: 9-23-05

Summary: The proposed amendment specifies that an applicant for a locum tenens must have an active or locum tenens registration status with the Board.

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

Department of Agriculture Chapter 603

Date: 9-16-05
Time: 10 a.m.
Location: Dept. of Agriculture
635 Capitol St. NE
Salem, OR 97302

Hearing Officer: Ron McKay
Stat. Auth.: ORS 633 & 561
Stats. Implemented: ORS 633.025 & 633.055
Proposed Amendments: 603-058-0005
Last Date for Comment: 9-16-05, 5 p.m.
Summary: The change we are proposing to adopt will bring the ODA Administrative Rule in line with the practices and policies implemented by feed programs in all states and recommended by AFCO. The present dated document is outdated.
Rules Coordinator: Sue Gooch
Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97310
Telephone: (503) 986-4583

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

Date: 9-20-05
Time: 9:30 a.m.
Location: 1535 Edgewater St. NW
Salem, OR 97310

Hearing Officer: Shane R. Sumption
Stat. Auth.: ORS 447.231, 447.247, 455.030, 455.110 & 455.112
Stats. Implemented: ORS 447.247, 455.110 & 455.112
Proposed Amendments: 918-460-0015
Last Date for Comment: 9-23-05, 5 p.m.
Summary: This rulemaking amends the 2004 Oregon Structural Specialty Code addressing construction requirements for wineries.
Rules Coordinator: Nicole M. Jantz
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 373-7438

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Date: 10-4-05
Time: 9:30 a.m.
Location: 1535 Edgewater St. NW
Salem, OR 97310

Hearing Officer: Casey T. Hoyer
Stat. Auth.: ORS 479.680 & 479.910
Stats. Implemented: ORS 479.650, 479.680 & 479.910
Proposed Adoptions: 918-283-0005
Proposed Amendments: Rules in 918-283
Last Date for Comment: 10-4-05, 5 p.m.
Summary: This rulemaking establishes a method for electrical licensees that renew on October 1, 2005 to bring excess code-change continuing education hours forward to the next license cycle and eliminates code-change continuing education for electrical contractors.
Rules Coordinator: Nicole M. Jantz
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 373-7438

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Department of Consumer and Business Services,
Director's Office
Chapter 440

Date: 10-7-05
Time: 10 a.m.
Location: Labor & Industries Bldg.
350 Winter St. NE
Conf. Rm. B

Hearing Officer: Fred Bruyns
Stat. Auth.: ORS 705.135, 656.726 & 656.612
Stats. Implemented: ORS 656.612 & 656.614

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 440-045-0020, 440-045-0025

Last Date for Comment: 10-14-05

Summary: The Director adopts by rule the percentage amount based on workers' compensation premiums to be levied on insurers, self-insured employers, and self-insured employer groups to meet the expenses of the department in carrying out its duties under ORS 656, ORS 654, and the Insurance Code. The assessment amount will be in effect from January 1, 2006, to December 31, 2006. All self-insured employers, as well as self-insured employer groups, shall be assessed an additional percentage amount to fund the Self-Insured Employers Adjustment Reserve and the Self-Insured Employer Group Adjustment Reserve. The actual amounts proposed will be announced on or before October 5, 2005.

Address questions to: Myrna Curzon, Rules Coordinator; phone 503-947-7866; fax 503-947-6444; or e-mail myrna.curzon@state.or.us

Rules Coordinator: Myrna Curzon

Address: Department of Consumer and Business Services, Director's Office, 350 Winter St. NE, PO Box 14480, Salem, OR 97309
Telephone: (503) 378-4100

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

Stat. Auth.: ORS 731.244 & 731.574

Stats. Implemented: 731.574 & 733.210

Proposed Amendments: 836-011-0000

Last Date for Comment: 9-23-05

Summary: The proposed amendments to this rule adopt the blanks and instructions established by the NAIC for annual statements and supplements for reporting years 2005 and 2006. The rule currently adopts blanks and instructions for reporting years 2003 and 2004.

Rules Coordinator: Sue Munson

Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301
Telephone: (503) 947-7272

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

Date:	Time:	Location:
9-26-05	10 a.m.	Rm. F (basement) Labor & Industries Bldg. 350 Winter St. NE Salem, OR

Hearing Officer: Fred Bruyns

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704, Enrolled House Bill 2091 - OL 2005, Ch. 26

Proposed Adoptions: 436-001-0023, 436-001-0027, 436-001-0252, 436-001-0259, 436-001-0296

Proposed Amendments: Rules in 436-001, 436-009-0008, 436-045-0008, 436-070-0008, 436-075-0008, 436-080-0070, 436-085-0008, 436-140-0008, 436-150-0008

Proposed Repeals: 436-001-0001, 436-001-0007, 436-001-0008, 436-001-0110, 436-001-0150, 436-001-0160, 436-001-0185, 436-001-0201, 436-001-0210, 436-001-0226, 436-001-0260, 436-130-0000, 436-130-0010, 436-130-0020, 436-130-0030, 436-130-0040, 436-130-0050, 436-130-0060, 436-130-0070, 436-130-0080, 436-130-0090, 436-130-0100

Proposed Ren. & Amendments: 436-001-0000 to 436-001-0009, 436-001-0155 to 436-001-0019, 436-001-0275 to 436-001-0246

Last Date for Comment: 9-30-05

Summary: The Workers' Compensation Division proposes to amend OAR chapter 436, division 001, "Procedural Rules Governing Rule-making and Hearings," and several related rules in divisions 009, 045, 070, 075, 080, 085, 140, and 150.

• House Bill 2091 (Oregon Laws 2005, chapter 26) moves hearings on workers' compensation matters currently processed by the Office of Administrative Hearings to the Workers' Compensation Board, for all hearings held on or after January 2, 2006. These proposed adoptions and amendments reflect that change. The Workers' Compensation Division proposes to repeal several rules in OAR 436-001 because the Workers' Compensation Board already has rules in place that govern the conduct of hearings. The Workers' Compensation Division proposes to amend and renumber some rules in OAR 436-001 to place rules in a sequence more aligned with the sequence of appeals and hearings.

The Workers' Compensation Division proposes to repeal OAR chapter 436, division 030, "Rehabilitation Facilities," in its entirety.

• ORS 656.530, the statute implemented by OAR 436-130, was repealed by Oregon Laws 1999, chapter 273, section 1.

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

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

Rules Coordinator: Fred Bruyns

Address: Department of Consumer and Business Services, Workers' Compensation Division, 350 Winter St. NE, Rm. 27, Salem, OR 97301-3879

Telephone: (503) 947-7717

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**Department of Environmental Quality
Chapter 340**

Date:	Time:	Location:
9-22-05	3 p.m.	811 SW Sixth Ave. Portland, OR Rm. 3A

Hearing Officer: Jeffrey Stocum, DEQ

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Proposed Amendments: 340-200-0020, 340-200-0040, 340-216-0060, 340-238-0040, 340-238-0050, 340-238-0060, 340-244-0030, 340-244-0040, 340-244-0220

Last Date for Comment: 9-29-05

Summary: The Oregon Department of Environmental Quality (DEQ) is proposing that the EQC adopt by reference recent revisions to the National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS). DEQ also proposes that the EQC adopt amendments made to the definition of volatile organic compounds (VOC), and the list of hazardous air pollutants (HAP). Adoption by the EQC will ensure that Oregon remains consistent with the federal requirements.

To submit comments or request additional information, please contact Jerry Ebersole at the Department of Environmental Quality (DEQ), 811 SW Sixth Avenue, Portland, OR 97204, toll free in Oregon at 800-452-4011 or 503-229-6974, EBERSOLE.Gerald@deq.state.or.us, 503-229-5675 (fax), or visit DEQ's website: <http://www.deq.state.or.us/news/index.asp>

Rules Coordinator: Larry McAllister

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

Telephone: (503) 229-6412

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Date:	Time:	Location:
10-4-05	6 p.m. briefing 7 p.m. hearing	DEQ 700 SE Emigrant Suite 330 Pendleton, OR 97801
10-5-05	6 p.m. briefing 7 p.m. hearing	DEQ 2020 SW 4th Ave. Suite 400 Portland, OR 97201

NOTICES OF PROPOSED RULEMAKING

Proposed Repeals: Rules in 635-004, 635-011, 635-039

Last Date for Comment: 10-7-05

Summary: These rules will amend groundfish regulations for recreational fishers and adopt rules for groundfish consistent with Pacific Fishery Management Council action. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: Katie Thiel

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

Telephone: (503) 947-6033

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Date:	Time:	Location:
10-7-05	8 a.m.	ODFW Commission Rm. 3406 Cherry Ave. NE Salem, OR 97303

Hearing Officer: Fish and Wildlife Commission

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Proposed Adoptions: Rules in 635-005, 635-006

Proposed Amendments: Rules in 635-005, 635-006

Proposed Repeals: Rules in 635-005, 635-006

Last Date for Comment: 10-7-05

Summary: Consider regulation changes to implement state jurisdiction out to 200 miles in the commercial Dungeness crab fishery by restricting Oregon permitted vessels to fish for crab south of the Oregon/Washington border, and allowing crab legally taken in the Pacific Ocean and Columbia River to be landed in Oregon with a valid Oregon permit. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: Katie Thiel

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

Telephone: (503) 947-6033

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Date:	Time:	Location:
10-7-05	8 a.m.	3406 Cherry Ave. NE Salem, OR 97303

Hearing Officer: Fish and Wildlife Commission

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

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

Proposed Amendments: Rules in 635-008, 635-043, 635-044, 635-045, 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

Last Date for Comment: 10-7-05

Summary: Establish 2006 hunting regulations for game mammals, including season dates, open areas, locations of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunt regulations. Specific rule changes include: changes to cougar quotas; extend cougar check-in time; and set 2006 spring bear controlled tag numbers. Rules may be adopted relating to archery hunting and equipment.

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

Rules Coordinator: Katie Thiel

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

Telephone: (503) 947-6033

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

Date:	Time:	Location:
9-19-05	10:30 a.m.–12 p.m.	Rm. 137 B 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-125-0080, 410-130-0200, 410-130-0680

Last Date for Comment: 9-19-05, 12 p.m.

Summary: The Hospital Services and Medical-Surgical Services program rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OMAP will amend the following OARs: 410-125-0080 to update the prior authorization codes and to add Prior Notification (PN) requirements; 410-130-0200 to change the title to Prior Authorization/Prior Notification, state that MRIs, MRAs, CTs, CTAs and SPECT scans require PN before these tests are performed and to add a table of the codes requiring PN; 410-130-0680 to list the test requiring PN and reference the PN table in 410-130-0200.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

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Date:	Time:	Location:
9-19-05	10:30 a.m.–12 p.m.	Rm. 137 B 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-125-0145

Last Date for Comment: 9-19-05, 12 p.m.

Summary: The Hospital Services Program administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for hospital services provided to clients on a fee-for-service basis. OMAP will permanently amend OAR 410-125-0145 to reflect reimbursement for inpatient and outpatient Proportionate Share for Public Academic Teaching Hospitals with 200 or more interns or residents.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

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Date:	Time:	Location:
9-19-05	10:30 a.m.–12 p.m.	Rm. 137 B 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-125-0141

Last Date for Comment: 9-19-05, 12 p.m.

Summary: The Hospital Services program administrative rules govern the Office of Medical Assistance Programs' payments for hospital services to certain clients. OMAP temporarily amended 410-125-0141 to reflect an increase in the Unit Value component of the formula that reimburses hospitals for inpatient services paid on a Diagnosis Related Group (DRG) basis. This increase is needed to bring the reimbursement for DRG hospitals more in line with Medicare rates. This is the Notice to permanently amend the rule.

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

NOTICES OF PROPOSED RULEMAKING

Department of Human Services, Public Health Chapter 333

Date: 10-10-05
Time: 1 p.m.
Location: Portland State Office Bldg.
Rm. 918
800 NE Oregon St.
Portland, OR

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600; Other Auth.: 7 CFR 246.12. Public Law 108-265

Stats. Implemented: ORS 409.600

Proposed Amendments: 333-054-0010, 333-054-0020, 333-054-0030, 333-054-0050, 333-054-0060, 333-054-0100

Proposed Repeals: 333-054-0010(T), 333-054-0020(T), 333-054-0030(T), 333-054-0050(T), 333-054-0060(T), 333-054-0100(T)

Last Date for Comment: 10-10-05, 5 p.m.

Summary: The United States Department of Agriculture recently handed down new requirements mandating that Women, Infants and Children (WIC) state programs implement certain provisions regarding authorized WIC vendors. The rule changes focus on:

- Requiring all vendors to maintain and provide documentation of food sales for the duration of the agreement period;
 - Identifying stores that derive more than 50% of their food sales from WIC food sales as "MT 50's";
 - Allowing "MT50's" to only offer incentive items to shoppers if they were obtained at no cost to the vendor.
 - Not allowing "MT50's" to offer delivery service to shoppers.
 - Notifying all vendors of the first violation of a sanction that requires a pattern before documenting any other violations unless notification would jeopardize the investigation;
 - Allowing vendors, other than "MT 50's" limited delivery service to shoppers;
 - Requiring all vendors to purchase infant formula from a state authorized infant formula provider;
 - Requiring all vendors to maintain and provide documentation of formula purchases for the duration of the agreement period; and
 - Changing the monetary calculations for state implemented sanctions requiring a civil money penalty in lieu of disqualification.
 - Allowing abbreviated, as well as, full administrative reviews for certain adverse actions taken by DHS against WIC vendors.
- Rules Coordinator:** Christina Hartman
Address: Department of Human Services, Public Health, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (503) 731-4405

Department of Human Services, Self-Sufficiency Programs Chapter 461

Date: 9-21-05
Time: 10 a.m.
Location: Rm. 255
500 Summer St. NE
Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816, 411.825 & 418.100

Proposed Amendments: 461-130-0310, 461-155-0150, 461-160-0040, 461-160-0430, 461-190-0360

Last Date for Comment: 9-22-05

Summary: Rule 461-130-0310 is being amended to remove inaccurate wording regarding non-citizens. This rule was also included in a prior Notice of Proposed Rulemaking package to clarify TANF program requirements. Both of these changes are scheduled to become effective October 1, 2005.

Rules 461-155-0150, 461-160-0040, 461-160-0430 and 461-190-0360 are being amended to reflect the cessation of the payment of child care necessary for Food Stamp mandatory clients to participate

in the Oregon Food Stamp Employment and Transition Program (OFSET).

Rule 461-155-0150 is also being amended to remove invalid zip codes and add new valid zip codes to the payment rate tables for provider payments.

In addition, the above rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.

Rules Coordinator: Annette Tesch

Address: Department of Human Services, Self-Sufficiency Programs, 500 Summer St. NE, E48, Salem, OR 97301-1066

Telephone: (503) 945-6067

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

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.511 - 344.690

Proposed Amendments: 411-200-0010, 411-200-0020, 411-200-0030, 411-200-0040

Last Date for Comment: 9-23-05

Summary: (1) The Department's Disability Determination Services section is amending 411-200-0010, General Policy rule under Rates of Payment - Medical rules to reflect the current Oregon Medical Fee and Relative Value Schedule in OAR 436, Division 009, updated effective April 1, 2005.

(2) Provides for general housekeeping.

Rules Coordinator: Lisa Richards

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: 9-23-05
Time: 9 a.m.
Location: 158 12th St. NE
Salem, OR

Hearing Officer: Christine Chute

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.220 - 36.238 & 183.502

Proposed Adoptions: 137-008-0120

Last Date for Comment: 9-23-05

Summary: The proposed rule would permanently adopt a rule that is currently only in place as a temporary rule. The rule provides for the confidentiality of the mediation of workplace interpersonal disputes between employees or between employees and officials of the Department of Justice. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed. This rule is identical to the rule on the confidentiality of mediation communications, developed by the Attorney General pursuant to ORS 36.224(2).

Rules Coordinator: Carol Riches

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

Telephone: (503) 378-6313

Date: 9-23-05
Time: 9 a.m.
Location: 158 12th St. NE
Salem, OR

Hearing Officer: Christine Chute

Stat. Auth.: ORS 192.445

Stats. Implemented: ORS 192.445

Proposed Amendments: 137-004-0800

Last Date for Comment: 9-23-05

Summary: The proposed change does not constitute a policy change; rather it would clarify the type of documentation that a person seeking a personal safety exemption to the public records law

NOTICES OF PROPOSED RULEMAKING

must provide. The change reorganizes the provisions that describe the kinds of documentation that might be presented.

Rules Coordinator: Carol Riches

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

Telephone: (503) 378-6313

Date:	Time:	Location:
9-23-05	9 a.m.	158 12th St. NE Salem, OR

Hearing Officer: Christine Chute

Stat. Auth.: ORS 183.502(3)

Stats. Implemented: OL 1997, Ch. 670 & OL 2005, Ch. 334

Proposed Amendments: 137-005-0040

Proposed Repeals: 137-005-0300, 137-005-0310

Last Date for Comment: 9-23-05

Summary: The rule changes amend the Attorney General's Model Rules to reflect changes by the 2005 Legislative Assembly in Or Laws, ch 334. These changes were necessary to eliminate rule language that restricted the persons who would be eligible to be mediators to state employees and private parties. These changes also eliminate rules related to a program in the Trial Division of the Department of Justice, the statutory authority for which sunset pursuant to Or Laws 1997, ch 670.

Rules Coordinator: Carol Riches

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

Telephone: (503) 378-6313

Date:	Time:	Location:
9-23-05	9 a.m.	158 12th St. NE Salem, OR

Hearing Officer: Christine Chute

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 9.320, 44.415, 183.341, 183.415, 183.425, 183.440, 183.445, 183.450(4), 183.458, 183.470, 183.482(3), 183.630, 183.635 & 183.650

Proposed Adoptions: 137-003-0672

Proposed Amendments: 137-003-0001, 137-003-0075, 137-003-0515, 137-003-0520, 137-003-0528, 137-003-0550, 137-003-0570, 137-003-0580, 137-003-0600, 137-003-0615, 137-003-0635, 137-003-0655, 137-003-0670, 137-003-0690

Last Date for Comment: 9-23-05

Summary: These proposed rule changes would amend some of the Attorney General's Model Rules of procedure for contested cases, including both those rules that apply to cases before the Office of Administrative Hearings and those rules that agencies may adopt separately.

Rules Coordinator: Carol Riches

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

Telephone: (503) 378-6313

Date:	Time:	Location:
9-23-05	9 a.m.	158 12th St. NE Salem, OR

Hearing Officer: Christine Chute

Stat. Auth.: ORS 183.341 & 183.502

Stats. Implemented: OL 2005 Ch. 17, OL 2005 Ch. 18, HB 3238 (2005), ORS 183.333, 183.341 & 183.502

Proposed Adoptions: 137-001-0087, 137-001-0095, 137-001-0100

Proposed Amendments: 137-001-0007, 137-001-0008, 137-001-0009, 137-001-0018, 137-001-0030, 137-001-0040, 137-001-0060, 137-001-0070, 137-001-0080

Proposed Repeals: 137-001-0011

Last Date for Comment: 9-23-05

Summary: The rule changes amend the Attorney General's Model Rules to reflect changes by the 2005 Legislative Assembly to the Administrative Procedures Act. The rule changes relate to fiscal impact statements and agency attempts to reduce the fiscal impact on small businesses; the roles of advisory committees; contents of the rulemaking record; agency review of new rules; statements of the objectives of agency rules; and format requirements for rulemaking proceedings. The changes also delete the requirement that the person presiding at a rulemaking hearing read the entire rulemaking notice upon request and delete language that might be read to prohibit the adoption of rules that apply retroactively. The amendments also change certain duties of a facilitator of a collaborative rule-making process from "shall" to "may."

Rules Coordinator: Carol Riches

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

Telephone: (503) 378-6313

Department of Oregon State Police Chapter 257

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Proposed Adoptions: 257-090-0010

Last Date for Comment: 9-21-05

Summary: Adopt OAR 257-090-0010 establishing confidentiality in mediation when Department of State Police is involved in ADR and other mediation situations.

Rules Coordinator: Cort Dokken

Address: Department of State Police, 225 Capitol St. NE, 4th Floor, Salem, OR 97301

Telephone: (503) 378-3720, ext. 4105

Department of Public Safety Standards and Training Chapter 259

Stat. Auth.: ORS 181.875, 181.878, 181.882 & 181.885

Stats. Implemented: ORS 181.875, 181.878, 181.882 & 181.885

Proposed Amendments: 259-060-0300

Last Date for Comment: 9-23-05

Summary: Housekeeping issue needed to correct statutory references allowing the Department to issue a Notice of Intent to Revoke on currently pending contested cases and clarify procedures for issuing an Emergency Suspension Order.

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 181.667

Stats. Implemented: ORS 181.667

Proposed Amendments: 259-008-0068

Last Date for Comment: 9-23-05

Summary: Housekeeping change only. Amends current rule to provide that fingerprint processing fee for Certified Retired Police Officers is to be 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.

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

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 181.640 & 181.665
Stats. Implemented: ORS 181.640 & 181.665
Proposed Adoptions: 259-008-0076
Last Date for Comment: 9-23-05

Summary: Establishes minimum eligibility requirements for Police Chief applicants.

A copy of the proposed rules is 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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Stat. Auth.: ORS 181.870, 181.871, 181.873, 181.878 & 181.883
Stats. Implemented: ORS 181.870, 181.871, 181.873, 181.878 & 181.883

Proposed Amendments: 259-060-0010, 259-060-0015, 259-060-0135, 259-060-0500

Last Date for Comment: 9-23-05

Summary: Housekeeping issues needed to define proprietary security services; correctly cross-reference rules; include the Washington Justice Training Commission firearm certification; and rollback fees.

OAR 259-060-0010(24)(d) further defines proprietary security services to mirror ORS 181.870(13)(d).

OAR 259-060-0015(2)(l) changes statutory reference from ORS 181.870(13)(a) to ORS 181.870(14)(a) and changes statutory reference from ORS 181.870(4)(f) to ORS 181.870(3)(f).

OAR 259-060-0135(3)(D)(v) adopts Washington Criminal Justice Training Center.

OAR 259-060-0500 reduces fees to previous fee schedule.

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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Stat. Auth.: ORS 181.640
Stats. Implemented: ORS 181.640
Proposed Amendments: 259-009-0005, 259-009-0062, 259-009-0065

Last Date for Comment: 9-23-05

Summary: Housekeeping issue to define "track"; Establishes maintenance requirements for track(s); Removes Water Supply Operations from the Fire Ground Leader standard, with historical recognition for Water Supplies training; Adopts Wildland Fire Investigator standards; Amends Fire Ground Leader certification to include Fire Fighter II and NFPA Pumper Operator; and adopts eleven (11) specialty certifications for fire service personnel from the Oregon Urban Search and Rescue (USAR) recommendations.

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:	Time:	Location:
11-29-05	10-11:30 a.m.	Dept. of Revenue 955 Center St. NE Salem, OR

Hearing Officer: Dave Zerbo
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.220(1) & 305.220(2)
Proposed Amendments: 150-305.220(1), 150-305.220(2)
Last Date for Comment: 11-29-05

Summary: These proposed changes are to amend administrative rules relating to the change of interest rates charged on refunds and deficiencies.

Rules Coordinator: Judith Lile
Address: Department of Revenue, 955 Center St. NE, Salem, OR 97301
Telephone: (503) 947-2099

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Department of Transportation Chapter 731

Date:	Time:	Location:
9-16-05	9 a.m.	ODOT Bldg. Rm. 122 355 Capitol St. NE Salem, OR 97301

Hearing Officer: Jill Pearson
Stat. Auth.: ORS 184.616, 184.619, Ch. 862, OL 2001 & Sec. 43, Ch. 618, OL 2003
Stats. Implemented: Ch. 862, OL 2001 & Sec. 43, Ch. 618, OL 2003

Proposed Amendments: 731-080-0020, 731-080-0030, 731-080-0040, 731-080-0070

Last Date for Comment: 9-21-05

Summary: These rules establish the Road User Fee Pilot Program. 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 amendments will modify existing rules allowing ODOT to run a pilot program to test the collection of a mileage based fee in lieu of fuels tax. Since the pilot is not slated to begin until March of 2006, we are changing the rules before participants are recruited. We are making the rule changes in order to avoid participants dropping out of the study due to higher out-of-pocket expenses by being in the congestion pricing group.

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, 1905 Lana Ave. NE, Salem, OR 97314
Telephone: (503) 945-5278

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

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.130, 807.150 & Sec. 9 Ch. 91 OL 1999

Stats. Implemented: ORS 807.130 & 807.150

Proposed Repeals: 735-062-0100

Last Date for Comment: 9-21-05

Summary: This rule establishes when DMV would renew a driver's license by mail. Section 9, Chapter 91, Oregon Laws 1999 authorizes DMV to establish by rule an orderly transition from a four-year period to an eight-year period for issuance and renewal of driver licenses. DMV adopted OAR 735-062-0095, which states: "The transition period begins on October 1, 2000 and ends on October 1, 2008. In order to complete the full transition to the eight-year period by October 1, 2008, DMV will stop issuing renewal reminder notices that authorize a person to renew by mail after September 30, 2004. Licensees required to renew a driver license after September 30, 2004 must appear in person at a DMV office." Because DMV is no longer renewing driver licenses by mail, DMV proposes to repeal OAR 735-062-0100, Driver License Renewal by Mail Program.

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

NOTICES OF PROPOSED RULEMAKING

Address: Department of Transportation, Driver and Motor Vehicle Services Division, 1905 Lana Ave. NE, Salem, OR 97314
Telephone: (503) 945-5278

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

Stat. Auth.: ORS 184.616, 184.619 & 825.555

Stats. Implemented: ORS 825.555

Proposed Amendments: 740-055-0030

Last Date for Comment: 9-21-05

Summary: OAR 740-055-0030 establishes fees for motor carriers that participate in the International Fuel Tax Agreement (IFTA). The current rule requires an annual fee from each motor carrier participating in IFTA. The fee is charged in order for the Department to recover the cost of administering the program. Fees are based on the number of motor vehicles a motor carrier elects to operate under IFTA. Some motor carriers separate their fleets into sub-accounts for accountability purposes and obtain an IFTA license from the Department for each sub-account. Because the current rule addresses a fee from each participating motor carrier, the Department is administering multiple accounts for some motor carriers and only being reimbursed for the cost of administering a single motor carrier account. The proposed amendment clarifies that the fee for participating in IFTA applies to each separate IFTA account (licensee).

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

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**Economic and Community Development Department
Chapter 123**

Stat. Auth.: ORS 285A.075(5) & 285a.110(1)

Stats. Implemented:

Proposed Adoptions: 123-018-0065, 123-018-0085

Proposed Amendments: 123-018-0000, 123-018-0010, 123-018-0020, 123-018-0030, 123-018-0040, 123-018-0050, 123-018-0060, 123-018-0070, 123-018-0080, 123-018-0090, 123-018-0100, 123-018-0110, 123-018-0120, 123-018-0130, 123-018-0140, 123-018-0150, 123-018-0160, 123-018-0170, 123-018-0180, 123-018-0190, 123-018-0200

Proposed Repeals: 123-018-0055

Last Date for Comment: 9-27-05

Summary: The Oregon Capital Access Program provides access to commercial loans for small businesses. Capital formation, new business start-up and expansion, and job development occur as a result. The Legislature passed SB215, which allows the Department to make additional deposits in loan loss reserve accounts to encourage banks to participate in the Capital Access Program.

Rules Coordinator: Paulina Bernard

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

Telephone: (503) 986-0036

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**Landscape Contractors Board
Chapter 808**

Date:	Time:	Location:
9-16-05	11 a.m.	Best Western Oceanview Resort Seaside, OR

Hearing Officer: Ron Overstreet

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.530, 671.540, 671.560 & 671.565

Proposed Amendments: 808-003-0015, 808-003-0200

Last Date for Comment: 9-21-05

Summary: 808-003-0015 - Requires physical address of all licensees; 808-003-0200 - Deletes exemption that is covered in statute.

Rules Coordinator: Kim Gladwill-Rowley

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

Telephone: (503) 986-6570

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**Oregon Board of Dentistry
Chapter 818**

Date:	Time:	Location:
9-15-05	7 p.m.	OHSU School of Dentistry 611 SW Campus Dr. Rms. 220 & 225 Portland, OR

Hearing Officer: Board President or Designee

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.010, 679.020, 579.025, 679.060, 679.065, 679.070, 679.090, 679.140, 679.250, 680.040, 680.050, 680.060 & 680.070

Proposed Amendments: 818-015-0040, 818-021-0010, 818-021-0017, 818-021-0020, 818-026-0030, 818-042-0040, 818-042-0060, 818-042-0070, 818-042-0120, 818-042-0130

Last Date for Comment: 9-15-05

Summary: The Board is amending 818-015-0040 Additional Forms of Disciplinary Action, to correct an error in the listing of a state statute.

The Board is amending 818-021-0010 Application for a License to Practice Dentistry, as a result of the passage of Senate Bill 458 Chapter 229 (2005 Laws) which requires the Board to allow applicants who have passed any clinical Board examination administered by a state or regional testing agency to be eligible for initial licensure as a dentist in the state of Oregon.

The Board is amending 818-021-0017 Application to Practice as a Specialist, to bring the rule into conformity with the requirements to pass any clinical board examination by any state or regional testing agency.

The Board is amending 818-021-0020 Application for a License to Practice Dental Hygiene, as a result of the passage of Senate Bill 458 Chapter 229 (2005 Laws) which requires the Board to allow applicants who have passed any clinical Board examination administered by a state or regional testing agency to be eligible for initial licensure as a dental hygienist in the state of Oregon.

The Board is amending 818-026-0030 Requirement for Anesthesia Permit, Standards and Qualifications of an Anesthesia Monitor, to require those applicants for an Anesthesia Permit who do not obtain a permit at the time that they receive initial licensure in the state of Oregon, to submit proper documentation of current training/education that would allow the Board to determine their current continued competence in requesting an Anesthesia Permit. It will also allow those applicants for an Anesthesia Permit who hold a similar permit in another state to submit proof that they have completed an appropriate number of procedures in the other state to qualify them for an Anesthesia Permit in Oregon.

The Board is amending 818-042-0040 Prohibited Acts, to correct errors in the listing of the state statute. The Board is further amending the rule to update and make current the rules regarding the exposing of radiographs to make them consistent with the recent rule changes adopted by the Department of Human Services, Health Services, Radiation Protection Services Section (RPS).

The Board is amending 818-042-0060 Certification — Radiologic Proficiency, 818-042-0120 Certification by Credential, and 818-042-0130 Application for Certification by Credential, to update and make current the rules regarding the exposing of radiographs to make them consistent with the recent rule changes adopted by the Department of Human Services, Health Services, Radiation Protection Services Section (RPS).

NOTICES OF PROPOSED RULEMAKING

The Board is amending 818-042-0070 Expanded Function Dental Assistants (EFDA), to bring specific language in compliance with previous rules that were amended by the Board but missed during previous rule changes.

Copies of the full text of proposed changes can be found on the Board's Web site (www.oregon.gov/dentistry) under "NEW" or by calling the Board of Dentistry at 503-229-5520.

Rules Coordinator: Sharon Ingram

Address: Oregon Board of Dentistry, 1600 SW 4th Ave., Suite 770, Portland, OR 97201

Telephone: (503) 229-5520

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**Oregon Department of Education,
Fair Dismissal Appeals Board
Chapter 586**

Date:	Time:	Location:
9-20-05	3 p.m.	Public Service Bldg. 251-A Salem, OR

Hearing Officer: Mike Reed

Stat. Auth.: ORS 342.930

Stats. Implemented: ORS 342.905

Proposed Adoptions: 586-030-0051

Proposed Amendments: 586-030-0050

Last Date for Comment: 9-20-05

Summary: The proposed amendments to OAR 586-030-0050 will specify that the parties exchange exhibits at least 10 days prior to the beginning of a hearing in order to expedite the process. The proposed new rule, OAR 586-030-0051 will expand the board's options should a witness in a hearing refuse to answer, rather than being able only to strike the witnesses testimony.

For a copy of these rules, please contact Debby Ryan at (503) 378-3600, ext. 2348 or e-mail debby.ryan@state.or.us. If you would like further information about these rules, please contact Randy Harnisch at (503) 378-3600, ext. 2350 or e-mail randy.harnisch@state.or.us.

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**

Date:	Time:	Location:
9-28-05	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, 473, 471.030, 471.392 - 402 & 473.140 - 160

Proposed Amendments: 845-010-0170

Last Date for Comment: 10-12-05

Summary: This rule describes the sorts of records the Commission requires manufacturers, wholesalers and importers to maintain. A recent statutory change means that some types of reporting no longer need to be done on a monthly basis. Staff recommends changing the language in section (5) of the rule to reflect the statutory changes.

Rules Coordinator: Katie Hilton

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

Telephone: (503) 872-5004

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Date:	Time:	Location:
9-28-05	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 473.050(4) & 473.060

Proposed Amendments: 845-010-0151

Last Date for Comment: 10-12-05

Summary: This rule describes procedures through which a wholesaler may claim a deduction for the privilege tax paid on defective malt beverage or wine after the wholesaler has destroyed the defective product. Section (1) of the rule currently requires that the wholesaler notify the Commission at least 24 hours before the product is destroyed. We no longer require 24 hours advance notice, and therefore intend to amend the rule to state that the Commission may require prior notification, but does not routinely or regularly require it for every destruction of defective product.

Rules Coordinator: Katie Hilton

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

Telephone: (503) 872-5004

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**Oregon Public Employees Retirement System
Chapter 459**

Date:	Time:	Location:
9-27-05	2 p.m.	Boardroom PERS Headquarters 11410 SW 68th Pkwy. Tigard, OR

Hearing Officer: David K. Martin

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.455 & OL 2005 Ch. 302

Proposed Amendments: 459-007-0015

Last Date for Comment: 11-1-05

Summary: Enacted 2005 legislation SB 109 (OL 2005 Ch. 302) amends ORS 238.455 to authorize the PERS Board to establish by rule the interest rate applied to underpayments of estimated benefits that are \$10 or more. This rule modification establishes the interest rate.

Copies of the proposed rules are available to any person upon request. The rules are also available at www.pers.state.or.us. Public comment may be mailed to the above address or sent via email to David.Martin@state.or.us

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:
9-27-05	2 p.m.	Boardroom PERS Headquarters 11410 SW 68th Pkwy. Tigard, OR

Hearing Officer: David K. Martin

Stat. Auth.: ORS 183.310 - 183.550, 183.600 - 183.690, 192.502, 237, 237.171, 237.191, 237.263, 238.410, 238.465(3), 238.630(5), 238.705, 238.650, 238A.005, 238A.130, 238A.170, 238A.410, 238A.450 & 243.470

Stats. Implemented: ORS 237.410 - 237.520, 237.610 - 237.620, 237.950 - 237.980, 192.410 - 192.505, 238, 238.005 - 238.750, 238A.330, 238A.400, 243.401, 243.507, 243.775, 243.800, 353.250(3), OL 2003 Ch. 733, 38 USC Sec. 4318(a)(2)(A), Enrolled 2005 HB 3262 Sec. (12), (13) & (14)

Proposed Amendments: 459-001-0015, 459-001-0025, 459-001-0035, 459-005-0001, 459-005-0010, 459-005-0150, 459-005-0210, 459-005-0215, 459-005-0220, 459-005-0350, 459-005-0525, 459-005-0560, 459-005-0599, 459-007-0050, 459-007-0060, 459-007-0530, 459-009-0020, 459-009-0070, 459-009-0084, 459-009-0085, 459-009-0120, 459-009-0350, 459-010-0003, 459-010-0005, 459-010-0010, 459-010-0011, 459-010-0012, 459-010-0014, 459-010-0025, 459-010-0030, 459-010-0045, 459-010-0165, 459-010-0175, 459-010-0205, 459-011-0100, 459-011-0110, 459-011-0200, 459-013-0060, 459-013-0260, 459-014-0030, 459-015-0030, 459-015-0035, 459-015-0040, 459-020-0015, 459-020-0050, 459-020-0055, 459-035-0150, 459-045-0000, 459-045-0001, 459-045-0010, 459-

NOTICES OF PROPOSED RULEMAKING

050-0070, 459-060-0000, 459-075-0010, 459-080-0150, 459-080-0250

Last Date for Comment: 10-3-05

Summary: PERS staff undertook a comprehensive review of the agency's administrative rules to clean up errors in citations, spelling, cross-references, etc. These non-substantive rule modifications are to be addressed as part of this rulemaking. This rulemaking was first noticed in the July, 2005 Oregon Bulletin and is amended with this notice to include non-substantive changes prompted by PERS-related enacted 2005 legislation (SB 108, HB 2189 and HB 3262).

Copies of the proposed rules are available to any person upon request. The rules are also available at www.pers.state.or.us. Public comment may be mailed to the above address or sent via email to David.Martin@state.or.us

Rules Coordinator: David K. Martin

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

Telephone: (503) 603-7713

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Oregon State Lottery
Chapter 177

Date:	Time:	Location:
9-29-05	9-10 a.m.	Oregon Lottery 500 Airport Rd. SE Salem, OR

Hearing Officer: Larry Trott

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

Stats. Implemented: ORS 461.310

Proposed Amendments: 177-040-0029

Last Date for Comment: 9-29-05, 10 a.m.

Summary: At the April 7, 2005 Special Oregon Lottery Commission meeting, the Commission adopted rules for lines games, including a compensation rate review rule for Video Lottery retailers.

The Director has filed a Notice of Permanent Rulemaking to amend OAR 177-040-0029 to specify that if the reduced compensation rates set forth in the rule become effective, the effective date for the rate decrease does not begin until after the Commission has completed the required determination. The current rule makes the effective date of the rate decrease retroactive to July 1, 2007.

Rules Coordinator: Mark W. Hohlt

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

Telephone: (503) 540-1417

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

Stats. Implemented: ORS 461.200, 461.220 & 461.250

Proposed Amendments: 177-085-0005, 177-085-0015, 177-085-0020, 177-085-0025, 177-085-0030, 177-085-0035, 177-085-0065

Last Date for Comment: 9-30-05

Summary: In accordance with game changes promulgated by the Multi-State Lottery Association, the Powerball game rules are being updated with a new matrix and Power Play numbers which modify the odds of winning and the size of the jackpots. Annuitized payments will be paid in graduated payments (increasing each year).

Rules Coordinator: Mark W. Hohlt

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

Telephone: (503) 540-1417

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Oregon Youth Authority
Chapter 416

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.045, 420A.105, 420A.115, 420A.120, 420.905 & 420.910

Proposed Amendments: 416-300-0000, 416-300-0010, 416-300-0020, 416-300-0030, 416-300-0040, 416-300-0050, 416-300-0060, 416-300-0080

Proposed Repeals: 416-300-0070, 416-300-0090, 416-300-0100, 416-300-0110, 416-300-0120

Last Date for Comment: 9-22-05

Summary: THIS NOTICE SUPERSEDES THE NOTICE FILED 7/12/05.

OAR Chapter 416, Division 300 will be amended for the following reasons: The Purpose of these rules will be changed to accurately reflect the Oregon Youth Authority's position as it relates to offenders on conditional release status in the community; definitions will be revised and updated; rule titles will change to more accurately describe their intent; parole status and revocation will be revised and changed to more concisely define the due process requirements for revocation.

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

Telephone: (503) 378-3864

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Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 419A.260 & 419A.262

Proposed Amendments: 416-140-0000, 416-140-0010, 416-140-0020, 416-140-0030, 416-140-0040

Last Date for Comment: 10-3-05

Summary: These rules will be amended to correct some grammatical issues and to add provision in OAR 416-140-0040 for notification to the court of any identifiable numbers pertaining to a commitment record.

Rules Coordinator: Kimberly Walker

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

Telephone: (503) 378-3864

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Public Utility Commission
Chapter 860

Date:	Time:	Location:
9-20-05	9:30 a.m.	Public Utility Commission Main Hearing Rm. 550 Capitol St. NE Salem, OR

Hearing Officer: Traci Kirkpatrick

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 756.040, 757.005, 757.205, 757.210, 757.600, 757.649 & 757.659

Proposed Adoptions: 860-022-0075

Proposed Amendments: 860-011-0080, 860-012-0040, 860-021-0008, 860-021-0010, 860-021-0033, 860-021-0045, 860-021-0205, 860-021-0326, 860-021-0335, 860-021-0405, 860-021-0410, 860-021-0414, 860-021-0415, 860-021-0420, 860-022-0001, 860-022-0017, 860-022-0040, 860-022-0046, 860-023-0001, 860-023-0005, 860-023-0020, 860-023-0080, 860-023-0090, 860-023-0100, 860-023-0110, 860-023-0120, 860-023-0130, 860-023-0140, 860-023-0150, 860-023-0160, 860-025-0001, 860-026-0005, 860-027-0001, 860-027-0045, 860-027-0120, 860-027-0300, 860-030-0005, 860-030-0010, 860-030-0015, 860-030-0018, 860-038-0005, 860-038-0300, 860-038-0400, 860-038-0410

Last Date for Comment: 9-21-05

Summary: The proposed rule related to non-energy attributes of renewable energy (green tags) clarifies their ownership in cases where the utility purchases energy under a net metering or other small power production tariff. The proposed rule changes related to Energy Service Suppliers clarify the criteria for granting certification and to specify the review procedures for such applications. The housekeeping changes align use of the terms "electric utility" and "electric company" (and related terms) in the rules with the statutory definitions of such terms.

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: Diane Davis
Address: Public Utility Commission of Oregon, 550 Capitol St. NE,
Suite 215, Salem, OR 97301-2551
Telephone: (503) 378-4372

Water Resources Department
Chapter 690

Date:	Time:	Location:
9-19-05	12-1 p.m.	OWRD Conf. Rm. 124a 725 Summer St. NE Salem, OR
9-19-05	4-6 p.m.	OWRD Conf. Rm. 124a 725 Summer St. NE Salem, OR

Hearing Officer: Lisa Juul
Stat. Auth.: ORS 537.230 & 537.630
Stats. Implemented: ORS 537.230, 537.630 & HB 3038 (2005 Legislative Session)
Proposed Amendments: 690-315-0010, 690-315-0060, 690-315-0070, 690-315-0080, 690-315-0090

Last Date for Comment: 9-21-05, 5 p.m.

Summary: The Water Resources Department is proposing to amend rules related to water right permit extensions (OAR Chapter 690, Division 315) to implement statutory changes from the 2005 legislative session. This rulemaking will adjust the standards the Department uses to review applications for extensions of time filed by holders of municipal use permits and clarifies that holders of municipal permits may not develop additional water under their permit until the Department approves a water management and conservation plan. The Department may also amend rules to clarify the fee and request for contested case hearings for municipal extensions.

The Department previously filed notice of this rulemaking in the Oregon Bulletins published by the Secretary of State on July 1, 2005 and on August 1, 2005. The Department canceled the rulemaking hearing scheduled for August 17, 2005 and has rescheduled the hearing for September 19, 2005. As a result of the change in the hearing schedule, the public comment period is extended to September 21, 2005.

Rules Coordinator: Debbie Colbert
Address: Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301
Telephone: (503) 986-0878

ADMINISTRATIVE RULES

Appraiser Certification and Licensure Board Chapter 161

Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1993(Temp), f. & cert. ef. 3-3-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 6-2003, f. & cert. ef. 11-24-03; ACLB 3-2005, f. & cert. ef. 7-22-05

Adm. Order No.: ACLB 3-2005

Filed with Sec. of State: 7-22-2005

Certified to be Effective: 7-22-05

Notice Publication Date: 6-1-04

Rules Amended: 161-006-0160, 161-010-0010, 161-010-0035, 161-010-0045, 161-010-0055, 161-010-0080, 161-020-0110, 161-020-0150

Subject: Permanent changes to Oregon Administrative Rules 161, Division 6 regarding organization, administration and procedures; Division 10 regarding licensure and certification requirements, and Division 20 regarding educational courses, requirements and providers.

Rules Coordinator: Karen Turnbow—(503) 485-2555

161-006-0160

Complaints, Investigations and Audits

(1) All complaints must be in writing and submitted to the Board's office.

(2) Any person may file a complaint.

(3) A member of the Board or the Administrator may also initiate a complaint or request an investigation.

(4) The Board will accept anonymous complaints.

(5) The Board will take no action on frivolous complaints. The Board will evaluate the content of each complaint. Factors such as, but not limited to, the following may cause a complaint to be classified as "frivolous":

(a) A complaint alleging that the appraised value is too high or too low that does not include supporting documentation to substantiate the allegation;

(b) A complaint that appears to be filed to gain a competitive advantage over or in retaliation against another appraiser; or

(c) A complaint filed by a person with a history of filing complaints that have no merit.

(6) A Notice of Complaint, together with a true copy of the complaint as submitted to the Board's office, including all supporting documentation, shall be promptly sent by certified mail, return receipt requested, to the last known address of the person against whom the complaint is filed. The Notice of Complaint shall require:

(a) The production of true copies of records within a specific time period to which no extension will be granted; and

(b) A written response to the allegations set forth in the complaint within a specified time period.

(A) A respondent may request an extension to file a response to a notice of complaint. An extension of up to 30 days will be approved provided that the extension request:

(i) Substantiates that good cause exists to grant such an extension and that circumstances beyond the reasonable control of the respondent prevent a response within 30 days;

(ii) Is submitted to the Board Administrator in writing on or before the response due date; and

(iii) Does not ask for an extension of time in excess of 30 days.

(B) The Administrator may grant one additional extension of no more than 30 days only upon showing of good cause.

(7) The Administrator shall ensure that each non-frivolous complaint is investigated to determine if violations of ORS Chapter 674 and/or OAR chapter 161 have occurred. The investigation may include all inquiries deemed appropriate to ensure that each complaint is processed in accordance with ORS Chapter 183.

(8) The Board may initiate an audit or other type of inquiry or investigation to verify an individual's compliance with ORS 674 and OAR 161.

(9) Every licensed or certified appraiser or registered appraiser assistant must cooperate with the Board and must respond fully and truthfully to Board inquiries and comply with any requests from the Board, subject only to the exercise of any applicable right or privilege. Failure to cooperate with the Board is unethical and is grounds for discipline including revocation or suspension of a license, certificate or registration, imposition of a civil penalty, or denial of a license, certificate, or registration, or any combination thereof.

Stat. Auth.: ORS 674.170, 674.305 & 674.310

Stats. Implemented: ORS 674

161-010-0010

Appraisers in Oregon and Renewal Procedures

(1) There are three categories of appraisers in Oregon; state licensed appraiser, state certified residential appraiser, and state certified general appraiser.

(2) Unlicensed/Uncertified individuals may assist in the preparation of an appraisal, but are not allowed to sign the appraisal report.

(3) Appraisers in Oregon must demonstrate competency by meeting prerequisite and continuing education, testing, and experience requirements established by the Board.

(4) All licenses and certificates are subject to renewal every two years on or before the last day of the license or certificate holder's birth month.

(5) Each license or certificate may be renewed upon receipt of the renewal fee specified in OAR 161-003-0020, a complete renewal application that includes a current, recognizable, passport style photograph of the applicant, and evidence of the completion of continuing education requirements as provided in OAR 161-020-0150. The completed application, fee, and evidence of continuing education requirements must be received in the Board office on or before the expiration date of the license to be considered timely. If the expiration date falls on a weekend or legal holiday, the renewal application must be received no later than 5:00 p.m. on the next business day following the date of expiration.

(6) Renewal applications received after the expiration date and within one (1) year of the date of expiration shall be assessed a late fee in addition to the renewal fee. It is unlawful for any appraiser to engage in, carry on, advertise or purport to engage in or carry on real estate appraisal activity within this state after a license or certificate has expired and prior to properly renewing the expired license or certificate.

(7) If an appraiser fails to renew their license or certificate within one year from the date of expiration, the status of the license or certificate becomes terminated and they must reapply for licensure or certification pursuant to OAR 161-010-0020 through 161-010-0055.

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 4-1991(Temp), f. & cert. ef. 8-29-91; ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2005, f. & cert. ef. 7-22-05

161-010-0035

Prerequisite Experience and Education Requirements for State Certified General Appraisers

As a prerequisite to taking the examination for certification as a state certified general appraiser, an applicant shall present evidence satisfactory to the Administrator that the applicant has:

(1) At least 3,000 cumulative hours of acceptable appraisal experience, including at least 1,500 hours of appraisal experience in non-residential appraising. "Cumulative" is defined as meaning that experience may be acquired over any time period of at least thirty (30) months.

(2) Successfully completed not less than 180 classroom hours of acceptable appraisal courses as set forth in OAR 161-020-0110, to include no less than 105 hours of courses other than non-complex residential real estate appraisal. Included within that requirement, each applicant shall have successfully completed the 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, within two (2) years preceding the date of application and have successfully passed an examination thereon.

(3) Effective January 1, 2008, as a prerequisite to taking the examination for certification as a State Certified General Appraiser, an applicant must present evidence satisfactory to the Administrator that the applicant has:

(a) At least 3,000 cumulative hours of acceptable appraisal experience, including at least 1,500 hours of non-residential appraisal experience. Cumulative hours must be acquired over at least thirty (30) months.

(b) Completed not less than 300 class hours of acceptable appraisal courses as set forth in OAR 161-020-0110, with particular emphasis on non-residential properties.

(c) A Bachelors degree or higher from an accredited college or university, unless the following requirements are satisfied: In lieu of the Bachelors degree, an applicant for State Certified General Appraiser shall successfully complete the following collegiate level subject matter courses

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from an accredited college, junior college, community college or university, totaling a minimum of 30 semester credit hours, 45 quarter hours, or 450 classroom hours:

- (A) English Composition;
- (B) Micro Economics;
- (C) Macro Economics;
- (D) Finance;
- (E) Algebra, Geometry, or higher mathematics;
- (F) Statistics;
- (G) Introduction to Computers-Word Processing/Spreadsheets;
- (H) Business or Real Estate Law; and
- (I) Two elective courses in accounting, geography, ageconomics, business management, or real estate.

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

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 1-1994, f. & cert. ef. 2-1-94; Renumbered from 161-010-0030 & 161-010-0040; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2005, f. & cert. ef. 7-22-05

161-010-0045

Prerequisite Experience and Education Requirements for State Certified Residential Appraisers

(1) As a prerequisite to taking the examination for certification as a state certified residential appraiser, an applicant shall present evidence satisfactory to the Administrator that the applicant has completed at least 2,500 cumulative hours of acceptable appraisal experience. "Cumulative" is defined as meaning that experience may be acquired over any time period of at least twenty-four (24) months.

(2) As a prerequisite to taking the examination for certification as a state certified residential appraiser an applicant shall present evidence satisfactory to the Administrator that the applicant has successfully completed no less than 120 classroom hours of acceptable appraisal courses as set forth in OAR 161-020-0110, which may include courses that fulfill the educational requirement for state licensed appraisers set forth in OAR 161-020-0110. Included within that requirement, each applicant shall have successfully completed the 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, within two (2) years preceding the date of application and have successfully passed an examination thereon.

(3) Effective January 1, 2008, as a prerequisite to taking the examination for certification as a State Certified Residential Appraiser, an applicant shall present evidence satisfactory to the Administrator that the applicant has:

(a) At least 2,500 cumulative hours of acceptable appraisal experience. Cumulative hours must be acquired over at least twenty-four (24) months.

(b) Completed not less than 200 class hours of acceptable appraisal courses as set forth in OAR 161-020-0110.

(c) An Associate degree or higher from an accredited college or university, unless the following requirements are satisfied: In lieu of the Associate degree, an applicant for State Certified Residential Appraiser shall successfully complete the following collegiate level subject matter courses from an accredited college, junior college, community college or university, totaling a minimum of 21 semester credit hours, 31.5 quarter hours, or 315 classroom hours:

- (A) English Composition;
- (B) Principles of Economics (Micro or Macro);
- (C) Finance;
- (D) Algebra, Geometry, or higher mathematics;
- (E) Statistics;
- (F) Introduction to Computers-Word Processing/Spreadsheets; and
- (G) Business or Real Estate Law.

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

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 3-2005, f. & cert. ef. 7-22-05

161-010-0055

Prerequisite Experience and Education Requirements for State Licensed Appraisers

(1) As a prerequisite to taking the examination for licensure as a state licensed appraiser, an applicant shall present evidence satisfactory to the Administrator that the applicant has completed at least 2,000 hours of acceptable appraisal experience.

(2) As a prerequisite to taking the examination for licensure as a state licensed appraiser, an applicant shall present evidence satisfactory to the Administrator that the applicant has successfully completed not less than 105 classroom hours of acceptable appraisal courses as set forth in OAR 161-020-0110. Included within these requirements, each applicant shall have successfully completed the 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, within two (2) years preceding the date of application and have successfully passed an examination thereon.

(3) Effective January 1, 2008, as a prerequisite to taking the examination for licensure as a State Licensed Appraiser, an applicant shall present evidence satisfactory to the Administrator that the applicant has:

(a) At least 2,000 cumulative hours of acceptable appraisal experience. Cumulative hours must be acquired over at least twelve (12) months.

(b) Completed not less than 150 classroom hours of acceptable appraisal courses as set forth in OAR 161-020-0110.

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

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 5-1991(Temp), f. & cert. ef. 11-18-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 1-1994, f. & cert. ef. 2-1-94; Renumbered from 161-010-0050 & 161-010-0060; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 3-2005, f. & cert. ef. 7-22-05

161-010-0080

Appraiser Assistant Registration Requirements

(1) In order to gain experience credit, an appraiser assistant must register with the Board. Experience gained prior to registration will not be accepted.

(2) As a prerequisite to registering as an appraiser assistant with the Board, an applicant must:

(a) Complete the mandatory 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, including successful passage of the final examination, within two (2) years preceding the date of application.

(b) Complete no less than 60 hours of other qualifying education, including successful passage of the final examination, as set forth in OAR 161-020-0110 within five (5) years preceding the date of application. The five (5) year requirement does not apply to licensed or certified appraisers registering as appraiser assistants to upgrade their license;

(c) Obtain one or more supervising appraisers who will directly supervise their appraisal activities; and

(d) Submit a complete Appraiser Assistant Registration signed by all supervising appraisers.

(3) Effective January 1, 2008, as a prerequisite to registering as an appraiser assistant with the Board, an applicant must:

(a) Complete the mandatory 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, including successful passage of the final examination, within two (2) years preceding the date of application.

(b) Complete no less than 60 hours of other acceptable appraisal courses, including successful passage of the final examinations, as set forth in OAR 161-020-0110 within five (5) years preceding the date of application. The five (5) year requirement does not apply to licensed or certified appraisers registering as appraiser assistants to upgrade their license;

(c) Obtain the signature of one or more State Certified supervising appraisers who agree they will directly supervise the applicant's appraisal activities; and

(d) Submit a complete Appraiser Assistant Registration signed by all supervising appraisers, along with an appraisal log from all supervising appraisers listing all appraisal reports completed by the supervising appraiser, within 30 days of the date of application.

(4) A registered appraiser assistant must renew annually. The renewal must document all qualifying education obtained within the previous year and include an experience log documenting all appraisal activity for the previous year.

(5) Registered Appraiser Assistants must successfully complete the Appraisal Foundation's National USPAP Update Course, or its equivalent, every two years.

(6) An appraiser assistant who remains in this classification in excess of two years shall be required, in the third and successive years, to obtain the equivalent of fourteen classroom hours of instruction for continuing education in courses or seminars for each year preceding the renewal. Continuing education hours may be obtained anytime during the term preceding the annual renewal of the appraiser assistant registration.

(7) During the period beginning on the day following the expiration date of the registration, and ending on the date of the renewal of the registration, an appraiser assistant may not receive experience credit for any experience accrued during the lapse in registration. If the appraiser assistant

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fails to renew his or her registration within one year from the date of expiration, the status of the registration becomes terminated and he or she must reapply for appraiser assistant registration pursuant to OAR 161-010-0080.

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 2-2004, f. 5-25-04, cert., ef. 6-1-04; ACLB 3-2005, f. & cert. ef. 7-22-05

161-020-0110

Qualifying Education Course Content Guidelines

(1) General Guidelines:

(a) The course must be a real estate appraisal course that involves a minimum of fifteen classroom hours of instruction (including examination time) on acceptable topics;

(b) The course must generally be broad in scope and must cover various principles, concepts, standards, practices and/or methods that are applicable generally to the performance of a wide range of appraisal assignments that will commonly be encountered by licensed or certified appraisers. The course must be intended to provide the student with a broad-based foundation of knowledge and skills in real estate appraising;

(c) Coverage in a course of additional specific topics not listed as typical specific topics under the categories of acceptable courses will not exclude that course from consideration provided that:

(A) The principal focus of the course is not on such additional topics;

(B) The additional topics covered are appropriate (consistent with course learning objectives); and

(C) The course contains not less than fifteen classroom hours of instruction on acceptable topics. However, the course must still be consistent with the parameters described in these rules.

(d) The section titled "Unacceptable Courses" in these rules describes specifically the categories of courses that are not acceptable as qualifying education under these rules;

(e) Courses will be evaluated based on their content without regard to the course title;

(f) The following factors shall be used to convert university, college, junior college and community college course credits into classroom hours:

(A) One (1) semester credit equals fifteen (15) classroom hours

(B) One (1) quarter credit equals ten (10) classroom hours.

(2) Qualifying Education Requirements for Licensing and/or Certification:

(a) Only courses approved by the Administrator will be credited toward the education requirements. Approved courses have been assigned to curricula as follows:

(A) Basic Appraisal Principles and Practices;

(B) Applied Residential Appraisal Case Studies;

(C) Income Property Appraisal Principles and Methodology;

(D) Advanced Residential Form and Narrative Report Writing

(E) Applied Income Property Appraisal or Income Property Appraisal Case Studies;

(F) The Appraisal Foundation's National USPAP Course or its equivalent;

(G) Elective courses;

(H) Basic Appraisal Principles;

(I) Basic Appraisal Procedures;

(J) Residential Market Analysis and Highest and Best Use;

(K) Residential Appraiser Site Valuation and Cost Approach;

(L) Residential Sales Comparison and Income Approaches;

(M) Residential Report Writing and Case Studies;

(N) Statistics, Modeling and Finance;

(O) Advanced Residential Applications and Case Studies;

(P) General Appraiser Market Analysis and Highest and Best Use;

(Q) General Appraiser Sales Comparison Approach;

(R) General Appraiser Site Valuation and Cost Approach;

(S) General Appraiser Income Approach;

(T) General Appraiser Report Writing and Case Studies.

(b) For state licensed appraisers, courses in the following categories and credit hours must be completed with the successful passage of an examination, as specified in these rules:

(A) Course(s) on Basic Appraisal Principles and Practices (30 hours in not less than 15 hour increments);

(B) Course(s) on Applied Residential Appraisal or Residential Appraisal Case Studies (30 hours in not less than 15 hour increments);

(C) Course(s) on Income Property Appraisal Principles and Methodology (30 hours in not less than 15 hour increments);

(D) The Appraisal Foundation's National USPAP Course or its equivalent.

(E) For all applications filed on or after January 1, 2008, courses in the following categories and credit hours must be completed, with the successful passage of an examination, as specified in these rules:

(i) Course(s) on Basic Appraisal Principles (30 hours in not less than 15 hour increments);

(ii) Course(s) on Basic Appraisal Procedures (30 hours in not less than 15 hour increments);

(iii) Course(s) on Residential Market Analysis and Highest and Best Use (15 hours);

(iv) Course(s) on Residential Appraiser Site Valuation and Cost Approach (15 hours);

(v) Course(s) on Residential Sales Comparison and Income Approaches (30 hours in no less than 15 hour increments);

(vi) Course(s) on Residential Report Writing and Case Studies (15 hours)

(vii) The Appraisal Foundation's National USPAP Course or its equivalent (15 hours).

(F) For applications received prior to January 1, 2008, courses noted in paragraph (E)(i) through (vi) above may be substituted for the courses required in paragraphs (A) through (C) above, provided that the applicant does not duplicate courses or types of courses, and successfully completes not less than 105 classroom hours of courses.

(c) For state certified residential appraisers, courses in the following categories and credit hours must be completed with the successful passage of an examination, as specified in these rules:

(A) Course(s) on Basic Appraisal Principles and Practices (30 hours in not less than 15 hour increments);

(B) Course(s) on Applied Residential Appraisal or Residential Appraisal Case Studies (30 hours in not less than 15 hour increments);

(C) Course on Advanced Residential Form and Narrative Report Writing (15 hours);

(D) Course on Income Property Appraisal Principles and Methodology (30 hours in not less than 15 hour increments);

(E) The Appraisal Foundation's National USPAP Course or its equivalent.

(F) For applications filed on or after January 1, 2008, courses in the following categories and credit hours must be completed, with the successful passage of an examination, as specified in these rules:

(i) Course(s) on Basic Appraisal Principles (30 hours in not less than 15 hour increments);

(ii) Course(s) on Basic Appraisal Procedures (30 hours in not less than 15 hour increments);

(iii) Course(s) on Residential Market Analysis and Highest and Best Use (15 hours);

(iv) Course(s) on Residential Appraiser Site Valuation and Cost Approach (15 hours);

(v) Course(s) on Residential Sales Comparison and Income Approaches (30 hours in no less than 15 hour increments);

(vi) Course(s) on Residential Report Writing and Case Studies (15 hours);

(vii) Course(s) on Statistics, Modeling and Finance (15 hours);

(viii) Course(s) on Advanced Residential Applications and Case Studies (15 hours);

(ix) Electives (20 hours);

(x) The Appraisal Foundation's National USPAP Course or its equivalent (15 hours).

(G) For applications received prior to January 1, 2008, courses noted in paragraph (F)(i) through (ix) above may be substituted for the courses required in paragraphs (A) through (D) above, provided that the applicant does not duplicate courses or types of courses, and successfully completes not less than 120 classroom hours of courses.

(d) For state certified general appraisers, [under] courses in the following categories and credit hours must be completed with the successful passage of an examination, as specified in these rules:

(A) Course(s) on Basic Appraisal Principles and Practices (30 hours in not less than 15 hour increments);

(B) Course(s) on Applied Residential Appraisal or Residential Appraisal Case Studies (30 hours in not less than 15 hour increments);

(C) Course(s) on Income Property Appraisal Principles and Methodology (30 hours in not less than 15 hour increments);

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(D) Course(s) on Applied Income Property Appraisal or Income Property Appraisal Case Studies (30 hours in not less than 15 hour increments);

(E) Course(s) eligible for approval as elective courses (45 hours in not less than 15 hour increments);

(F) The Appraisal Foundation's National USPAP Course or its equivalent.

(G) For all applications filed on or after January 1, 2008, courses in the following categories and credit hours must be completed, with the successful passage of an examination, as specified in these rules:

(i) Course(s) on Basic Appraisal Principles (30 hours in not less than 15 hour increments);

(ii) Course(s) on Basic Appraisal Procedures (30 hours in not less than 15 hour increments);

(iii) Course(s) on General Appraiser Market Analysis and Highest and Best Use (30 hours in not less than 15 hour increments);

(iv) Course(s) on Statistics, Modeling and Finance (15 hours);

(v) Course(s) on General Appraiser Sales Comparison Approach (30 hours in not less than 15 hour increments);

(vi) Course(s) on General Appraiser Site Valuation and Cost Approach (30 hours in not less than 15 hour increments);

(vii) Course(s) on General Appraiser Income Approach (60 hours in not less than 15 hour increments);

(viii) Course(s) on General Appraiser Report Writing and Case Studies (30 hours in not less than 15 hour increments);

(ix) Electives (30 hours in not less than 15 hour increments);

(x) The Appraisal Foundation's National USPAP Course or its equivalent (15 hours).

(H) For applications received prior to January 1, 2008, courses noted in paragraph (G)(i) through (ix) above may be substituted for the courses required in paragraphs (A) through (E) above, provided that the applicant does not duplicate courses or types of courses, and successfully completes not less than 180 classroom hours of courses.

(3) Acceptable Courses. Listed below are the categories of courses that are acceptable under these rules:

(a) Courses on Basic Real Estate Appraisal Principles and Practices:

(A) A course(s) in this category must be broad in scope and focus on basic real estate appraisal concepts, principles, and methods that are applicable generally to the appraisal of most types of real estate. Basic Real Estate Appraisal Principles and Practices courses would substantially include the following specific topics:

(i) Basic Concepts of Value (types of value, forces & factors influencing value and economic principles of value);

(ii) Legal Considerations in Real Estate Appraisal;

(iii) Characteristics and Analysis of Real Estate Markets;

(iv) Money/Capital Markets and Real Estate Financing;

(v) The Valuation Process;

(vi) Neighborhood/Area Analysis;

(vii) Collecting Property Data and Property Description;

(viii) Basic Building Construction, Design and Function;

(ix) Basic Statistical Concepts Used in Appraising;

(x) Highest and Best Use Analysis;

(xi) Sales Comparison Approach;

(xii) Site Valuation;

(xiii) Cost Approach;

(xiv) Income Approach;

(xv) Reconciliation;

(xvi) Valuation of Partial Interests.

(B) This category also includes basic real estate appraisal principles and practices courses which are oriented toward the appraisal of residential 1-4 unit properties. Courses that fall within this category may have a variety of titles. Although courses will be judged based on their content rather than their title, listed below are a few examples of course titles that acceptable courses might carry:

(i) Introduction to Real Estate Appraisal;

(ii) Fundamentals of Real Estate Appraisal;

(iii) Real Estate Appraisal Principles;

(iv) Residential Real Estate Appraisal Principles;

(v) Introduction to Residential Appraising;

(vi) Real Estate Appraisal Practices;

(vii) Basic Valuation Procedures;

(viii) Residential Appraisal Practices.

(b) Courses on Applied Residential Appraisal or Residential Appraisal Case Studies: A course(s) in this category will focus on the application of various basic real estate appraisal principles and methodology associated

with the valuation process to practical problems encountered in appraising various types of residential 1-4 unit properties. Applied Residential Appraisal or Residential Appraisal Case Studies courses would substantially include the following specific topics:

(A) Practice Problems Related to Appraising Various Residential 1-4 Unit Properties (Problems might relate to data collection, market analysis, highest and best use analysis, site valuation, cash equivalency, paired sales analysis, estimating building costs and depreciation, gross rent multiplier analysis, reconciliation, etc.);

(B) Case Studies of Appraisals of Various Residential 1-4 Unit Properties;

(C) URAR Form Preparation;

(D) Preparation of Narrative Residential Appraisal Report.

(C) Courses on Advanced Residential Form and Narrative Report Writing: A course(s) in this category is a communication course focusing on residential appraisal reports. The emphasis must be on how to successfully communicate the support data in the report and not on "how to fill out a report form". Advanced Residential Form and Narrative Report writing course would substantially include the following specific topics:

(A) Preparation and presentation of the URAR form, ERC Form, etc.;

(B) Preparation and presentation of narrative comments to form reports;

(C) Preparation and presentation of the Small Residential Income-Producing Report Form;

(D) Narrative writing assignments and critiques, including writing style and grammar;

(E) Case Studies of appraisals using the forms and narrative format;

(F) Lectures on editing, proofreading and checking the final draft;

(d) Courses on Income Properties Appraisal Principles and Methodology:

(A) This category includes courses that are broad in scope and that focus on real estate appraisal concepts, principles and methodology that are applicable generally to the appraisal of most types of income property. Income Properties Appraisal Principles and Methodology course would substantially include the following specific topics:

(i) The Valuation Process (review from perspective of appraising income properties);

(ii) Market Analysis (from perspective of appraising income properties);

(iii) Basic Income Property Valuation Concepts (market value and investment value, types of income, rates of return, capitalization concept);

(iv) Compound Interest and Discount Factors (concepts and applications);

(v) Estimating Gross Income, Expenses and Net Operating Income;

(vi) Operating Statement Ratios and Analysis;

(vii) Using Income Multipliers;

(viii) Direct Capitalization:

(I) Using Overall Capitalization Rate Extracted from Market;

(II) Using Overall Capitalization Rate Derived by Band of Investment Method.

(ix) Using Residual Techniques;

(x) Discounted Cash Flow Analysis (yield capitalization considerations);

(xi) Forecasting Cash Flows and Reversion (including lease considerations);

(xii) Valuation with Basic DCF Formula Using Overall Yield;

(xiii) Discount Rate;

(xiv) Valuation Using Various Yield Capitalization Formulas;

(xv) Mortgage and Equity Interests (concepts and effect of valuation);

(xvi) Investment Measures for the Equity Investor;

(xvii) Valuation Using Equity Capitalization Rate;

(xviii) Mortgage-Equity Analysis Using Ellwood Formula and Akerson Method;

(xix) DCF Analysis Using Equity Yield Rate;

(xx) Deriving Yield Rates by Extraction and Buildup Method;

(xxi) Site Valuation;

(xxii) Sales Comparison Approach (applied to income property appraising);

(xxiii) Cost Approach (applied to income property appraising);

(xxiv) Reconciliation.

(B) In addition to "introductory-level" income property appraisal courses which focus on the general subject areas of "Basic Income Capitalization Concepts" and "Direct Capitalization", this category also includes "advanced" or "second-level" income property appraisal courses which have an introductory-level income property appraisal course as a

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prerequisite and which focus on the general subject area of "Yield Capitalization (discounted cash flow analysis) Concepts and Methodology". Courses that fall within this category have a variety of titles. Although courses will be judged based on their content rather than their title, listed below are a few examples of course titles that acceptable courses might carry:

- (i) Introduction to Income Property Appraising;
- (ii) Principles of Income Property Appraisal;
- (iii) Appraising Income Property;
- (iv) Basic Income Capitalization Theory and Techniques;
- (v) Advanced Income Capitalization Theory and Techniques.
- (e) Courses on Applied Income Property Appraisal or Income Property Appraisal Case Studies:

(A) This category includes courses that focus on the application of various general real estate appraisal principles and methodology, particularly income capitalization concepts and methods, to practical problems encountered in appraising various types of income properties. Applied Income Property Appraisal or Income Property Appraisal Case Studies courses would substantially include the following specific topics:

(i) Practice Problems Related to Appraising Various Income Properties (problems might relate to market analysis, cash flow forecasting, collecting/analyzing data, subdivision development analysis, extracting/deriving yield rates, applying various discounted cash flow analysis techniques, highest and best use analysis, etc.);

- (ii) Case Studies of Appraisals of Various Income Properties;
- (iii) Preparation of Narrative Income Property Appraisal Report;
- (iv) UCIAR Form Preparation.

(B) Courses which cover report preparation but which emphasize instruction on application of income property appraisal principles and methodology, or which include one or more comprehensive case studies of income property appraisals, are also acceptable under this category. Courses that focus only on the mechanical aspects of report preparation are not acceptable.

(f) Courses on the Uniform Standards of Professional Appraisal Practice (USPAP):

(A) The Appraisal Foundation's National USPAP Course or its equivalent are the only acceptable courses for this category.

(g) Courses eligible for approval as elective courses for Qualifying Education. These courses are considered more appropriate for Continuing Education than for Qualifying Education under these rules, but can qualify as elective if they are at least 15 hours in duration and an exam is required. Courses must focus primarily on advanced concepts/methods, a specialized aspect of real estate appraising, or appraising one specific type of property. Examples of course topics may include, but are not limited to the following:

- (A) Real Estate Investment Analysis;
- (B) Feasibility Analysis;
- (C) Condemnation Appraising/Right of Way Appraising;
- (D) Review Appraising;
- (E) Mass Appraisal;
- (F) Subdivision Analysis;
- (G) Litigation/Testifying as Expert Witness;
- (H) Appraising Condominiums;
- (I) Appraising Manufactured Housing;
- (J) Appraising Multi-Family Housing;
- (K) Appraising Office Buildings;
- (L) Appraising Farms;
- (M) Appraising Land;
- (N) Appraising Machinery and Equipment.

(h) Courses on Basic Appraisal Principles (30 hours). A course(s) in this category must be broad in scope and focus on basic real estate appraisal concepts, principles, and methods that are applicable generally to the appraisal of most types of real estate. Basic Appraisal Principles courses would substantially include the following specific topics:

- (A) Real Property Concepts and Characteristics:
 - (i) Basic Real Property Concepts;
 - (ii) Real Property Characteristics;
 - (iii) Legal Description.
- (B) Legal Consideration:
 - (i) Forms of Ownership;
 - (ii) Public and Private Controls;
 - (iii) Real Estate Contracts;
 - (iv) Leases.
- (C) Influences on Real Estate Values:
 - (i) Governmental;

- (ii) Economic;
- (iii) Social;
- (iv) Environmental, Geographic and Physical.
- (D) Types of Value:
 - (i) Market Value;
 - (ii) Other Value Types.
- (E) Economic Principles:
 - (i) Classical Economic Principles;
 - (ii) Application and Illustrations of the Economic Principles.
- (F) Overview of Real Estate Markets and Analysis:
 - (i) Market Fundamentals, Characteristics, and Definitions;
 - (ii) Supply Side Analysis;
 - (iii) Demand Analysis;
 - (iv) Use of Market Analysis.
- (G) Ethics and How They Apply in Appraisal Theory and Practice.

(i) Courses on Basic Appraisal Procedures (30 hours). A course(s) in this category must be broad in scope and focus on basic real estate appraisal procedures that are applicable generally to the appraisal of most types of real estate. Basic Appraisal Procedures courses would substantially include the following specific topics:

- (A) Overview of Approaches to Value
- (B) Valuation Procedures:
 - (i) Defining the Problem;
 - (ii) Collecting and Selecting Data;
 - (iii) Analyzing;
 - (iv) Reconciling and Final Value Opinion;
 - (v) Communicating the Appraisal.
- (C) Property Description:
 - (i) Geographic Characteristics of the Land/Site;
 - (ii) Geologic Characteristics of the Land/Site;
 - (iii) Location and Neighborhood Characteristics;
 - (iv) Land/Site Considerations for Highest and Best Use;
 - (v) Improvements- Architectural Styles and Types of Construction.
- (D) Residential Applications.
- (j) The 15-Hour National USPAP Course, or its equivalent (15 hours).
- (k) Courses on Residential Market Analysis and Highest and Best Use (15 hours). Residential Market Analysis and Highest and Best Use courses would substantially include the following specific topics:

- (A) Residential Markets and Analysis:
 - (i) Market Fundamentals, Characteristics and Definitions;
 - (ii) Supply Side Analysis;
 - (iii) Demand Analysis;
 - (iv) Use of Market Analysis.
- (B) Highest and Best Use:
 - (i) Test Constraints;
 - (ii) Application of Highest and Best Use;
 - (iii) Special Considerations;
 - (iv) Market Analysis;
 - (v) Case Studies;

(l) Courses on Residential Appraiser Valuation and Cost Approach (15 hours) that would substantially include the following specific topics:

- (A) Site Valuation:
 - (i) Methods;
 - (ii) Case Studies.
- (B) Cost Approach:
 - (i) Concepts and Definitions;
 - (ii) Replacement/Reproduction Cost New;
 - (iii) Accrued Depreciation;
 - (iv) Methods of Estimating Accrued Depreciation;
 - (v) Case Studies.

(m) Courses on Residential Sales Comparison and Income Approaches (30 hours) that would substantially include the following specific topics:

- (A) Valuation Principles & Procedures — Sales Comparison Approach;
- (B) Valuation Principles & Procedures — Income Approach;
- (C) Finance and Cash Equivalency;
- (D) Financial Calculator Introduction;
- (E) Identification, Derivation and Measurement of Adjustments;
- (F) Gross Rent Multipliers;
- (G) Partial Interests;
- (H) Reconciliation;
- (I) Case Studies and Applications.

(n) Courses on Residential Reporting Writing and Case Studies (15 hours) that would substantially include the following specific topics:

ADMINISTRATIVE RULES

- (A) Writing and Reasoning Skills;
 - (B) Common Writing Problems;
 - (C) Form Reports;
 - (D) Report Options and USPAP Compliance;
 - (E) Case Studies.
- (o) Courses on Statistics, Modeling and Finance (15 hours) that would include the following specific topics:

- (A) Statistics;
 - (B) Valuation Models (AVM's and Mass Appraisal);
 - (C) Real Estate Finance.
- (p) Courses on Advanced Residential Applications and Case Studies (15 hours) that would substantially include the following specific topics:
- (A) Complex Property, Ownership and Market Conditions;
 - (B) Deriving and Supporting Adjustments;
 - (C) Residential Market Analysis;
 - (D) Advanced Case Studies.
- (q) Courses on General Appraiser Market Analysis and Highest and Best Use (30 hours) that would substantially include the following specific topics:

- (A) Real Estate Markets and Analysis;
 - (i) Market Fundamentals, Characteristics and Definitions;
 - (ii) Supply Side Analysis;
 - (iii) Demand Analysis;
 - (iv) Use of Market Analysis.
- (B) Highest and Best Use:
- (i) Test Constraints;
 - (ii) Application of Highest and Best Use;
 - (iii) Special Considerations;
 - (iv) Market Analysis;
 - (v) Case Studies.
- (r) Courses on General Appraiser Sales Comparison Approach (30 hours) that would substantially include the following specific topics:

- (A) Value Principles;
 - (B) Procedures;
 - (C) Identification and Measurement of Adjustments;
 - (D) Reconciliation;
 - (E) Case Studies.
- (s) Courses on General Appraiser Site Valuation and Coast Approach (30 hours) that would substantially include the following specific topics:
- (A) Site Valuation:
 - (i) Methods;
 - (ii) Case Studies.
- (B) Cost Approach:
- (i) Concepts and Definitions;
 - (ii) Replacement/Reproduction Cost New;
 - (iii) Accrued Depreciation;
 - (iv) Methods of Estimating Accrued Depreciation;
 - (v) Case Studies.
- (t) Courses on General Appraiser Income Approach (60 hours) that would substantially include the following specific topics:

- (A) Overview;
 - (B) Compound Interest;
 - (C) Lease Analysis;
 - (D) Income Analysis;
 - (E) Vacancy and Collection Loss;
 - (F) Estimating Operating Expenses and Reserves;
 - (G) Reconstructed Income and Expense Statement;
 - (H) Stabilized Net Operating Income Estimate;
 - (I) Direct Capitalization;
 - (J) Discounted Cash Flow;
 - (K) Yield Capitalization;
 - (L) Partial Interests;
 - (M) Case Studies.
- (u) Courses on General Appraiser Report Writing and Case Studies (30 hours) that would substantially include the following specific topics:
- (A) Writing and Reasoning Skills;
 - (B) Common Writing Problems;
 - (C) Report Options and USPAP Compliance;
 - (D) Case Studies.

(4) Courses not eligible for approval as Qualifying Education. These types of courses are considered more appropriate for Continuing Education than for Qualifying Education under these rules. Courses which focus all or a vast majority of their instruction on only one comparatively narrow aspect of real estate appraising and which examine that one aspect in depth. These types of courses focus on the following topics:

- (a) Estimating Building Costs;
- (b) Estimating Accrued Depreciation;
- (c) Cash Equivalency;
- (d) Ellwood Mortgage-Equity Analysis;
- (e) Use of Financial Calculators in Appraising;
- (f) Valuation of Partial Interests.

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

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ALCB 2-1994(Temp), f. & cert. ef. 5-2-94; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 3-2005, f. & cert. ef. 7-22-05

161-020-0150

Time Requirements for Qualifying Education and Continuing Education

(1) Qualifying Education:

(a) If approved by the Administrator as meeting the requirements of these rules, audio educational offerings taken prior to July 1, 1990, shall be acceptable to meet the Qualifying Education requirements for certification and licensure;

(b) There is no time limit regarding when qualifying education credit must be obtained, with the following exceptions:

(A) The 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, must be obtained within two (2) years preceding the date of application; and

(B) All other qualifying education for applicants applying to be a registered appraiser assistant must be obtained within five (5) years preceding the date of application, with the exception of licensed or certified appraisers registering as an appraiser assistant to upgrade their license.

(c) The Administrator may grant credit for courses where the applicant obtained credit from the course provider by challenge examination without attending the courses, provided that such credit was granted by the course provider prior to July 1, 1990, and provided further that the Administrator is satisfied with the quality of the challenge examination that was administered by the course provider.

(2) Continuing Education:

(a) Continuing education hours shall be reported as part of the renewal application process. Reporting shall be on a form prescribed by the Board which includes the name of the educational provider, course subject matter, location, number of hours, course name, date of course and appraiser's name. The appraiser shall also submit a copy of the certificate of completion, URCEC form or grade report issued by the course provider;

(b) "Carry over" of hours from past to future years will not be allowed;

(c) The same or like course can not be repeated for use as continuing education within a two year period, with the exception of USPAP;

(d) Extension of time to satisfy continuing education hour requirements will not be permitted;

(e) USPAP:

(A) The Appraisal Foundation's National USPAP Update Course, or its equivalent, is required for renewal of all licensed and certified appraisers every two year license cycle. All licensed and certified appraisers whose licenses expire on or after June 30, 2003 shall be required to submit certificates of completion of the National USPAP Update course, or its equivalent, as part of their license renewal. All licensed and certified appraisers are required to complete the Appraisal Foundation's National USPAP Update Course, or its equivalent, before January 1, 2005.

(B) Registered Appraiser Assistants must successfully complete the Appraisal Foundation's National USPAP Update Course, or its equivalent, at a minimum of every two years.

(f) Fourteen hours of classroom instruction for each year preceding the license or certification renewal is required. Continuing education hours may be obtained any time during the term. Credit towards the classroom hour requirements shall be granted only where the length of the educational offering is at least two hours.

(g) Appraisers may receive up to eight (8) hours of continuing education credit for course instruction of an ACLB approved course per two year license cycle. However, the appraiser cannot receive credit for course instruction of the same course in consecutive license cycles.

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 3-2005, f. & cert. ef. 7-22-05

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Board of Accountancy Chapter 801

Adm. Order No.: BOA 4-2005

Filed with Sec. of State: 8-12-2005

Certified to be Effective: 8-12-05

Notice Publication Date: 11-1-04

Rules Amended: 801-030-0020

Subject: New section (13) in OAR 801-030-0020 describes a “continuing violation” violation and the potential civil penalty for such violations.

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

801-030-0020

Other Responsibilities and Practices

(1) Professional misconduct.

(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee’s fitness to practice public accountancy.

(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual’s honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person’s fitness to practice public accountancy.

(c) A licensee shall not act in a way that would cause the licensee to be disciplined for violation of laws or rules on ethics by a federal or state agency or by any jurisdiction for the practice of public accountancy.

(d) A licensee shall not engage in acts of gross negligence including, but not limited to:

(A) Failure to disclose a known material fact which is not disclosed in the financial statements, but disclosure of which is necessary to make the financial statements complete or not misleading, or

(B) Failure to report any known material misstatement which appears in the financial statements.

(2) Verification of experience for CPA or PA applicants.

(a) Licensees who supervise the work experience of CPA or PA applicants for the purpose of verifying the applicant’s eligibility under ORS 673.040 shall provide to the Board an accurate and complete certificate of experience for the applicant. Licensees who provide any certificate of experience for an applicant shall not:

(A) Make any false or misleading statement as to material matters in any certificate of experience, or

(B) Commit any act that would unjustly jeopardize an applicant’s ability to obtain a certificate in this or any other jurisdiction.

(3) **Acting through others.** A licensee shall not permit others to perform any acts on behalf of the licensee, either with or without compensation, which, if performed by the licensee would place the licensee in violation of the Code of Professional Conduct.

(4) **Public communications and advertising.** A licensee shall not use or participate in the use of any form of public communication, including advertising or solicitation by direct personal communication, having reference to the licensee’s professional services which contains a false, fraudulent, misleading, or deceptive statement or claim. A false, fraudulent, misleading, or deceptive statement or claim includes, but is not limited to, a statement or claim which:

(a) Includes a misrepresentation of fact;

(b) Is likely to mislead or deceive because it fails to make full disclosure of relevant facts;

(c) Includes any testimonial or laudatory statement, or other statement or implication about the services that is not based on verifiable fact;

(d) Is intended or likely to create false or unjustified expectations of favorable results;

(e) Implies educational or professional attainments or licensing recognition not supported in fact;

(f) Falsely states or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accounting;

(g) Falsely represents that professional services can or will be competently performed for a stated fee, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; or

(h) Contains other representations or implications that may cause a reasonable person to misunderstand or be deceived.

(5) **Professional designations.** A licensee shall not represent that the licensee is a member of any professional society, association, organization

or an association of firms, or that the licensee has a correspondent relationship with another licensee if such representation contains a false, fraudulent, misleading, or deceptive statement or claim within the meaning of section (4) of this rule.

(6) Firm names.

(a) False and misleading firm names.

(A) Licensees shall not practice public accountancy under a firm name which is misleading in any way as to the legal entity or organization of the firm, or as to the persons who are owners or managers of the firm, or as to any matter restricted by section (4) of this rule.

(B) A firm name shall not include false or misleading language about the business form of the firm, the nature of the services provided or the identity of individual members of the firm, and shall not include information about, or indicate an association with, individuals who are not members of the firm;

(C) A firm name shall include words or abbreviations sufficient to identify the form of business organization or legal entity being used by the firm as required by the laws under which the business organization is organized.

(D) A firm name may be composed of the names of one or more past partners, shareholders, owners, or members of the business organization or its successor. A partner, shareholder, owner or member surviving the death or withdrawal of all other partners, shareholders, owners or members may continue to practice under the firm name provided that the firm meets the requirements of this rule.

(b) **Singular firm names.** A Certified Public Accountant or Public Accountant in individual practice may use, in a title or designation, the individual’s full legal name in the singular form, which may be followed by the title “Certified Public Accountant,” “Public Accountant,” “CPA” or “PA”.

(c) Plural firm names.

(A) Firms may use a plural title or designation, including words like “company”, “and company”, “associates” and “accountants”, only if the firm employs at least one staff person, working a minimum of 20 hours per week, who is licensed to practice public accountancy under ORS 673.150, and whose permit is not revoked, suspended, lapsed or inactive.

(B) A firm using a plural name that ceases to employ at least one licensed staff person for 20 hours per week or more shall:

(i) Cease using the plural name and so notify the Board in writing; or

(ii) Notify the Board in writing within 30 days of non-compliance. Such firm shall have 90 days in which to employ a licensed staff person as required under paragraph (A) of this subsection. The firm shall provide written notice to the Board when the firm has employed the required licensed staff person.

(C) A firm may file a written request for an additional 90-day extension in which to employ the required licensed staff person.

(d) Assumed business names.

(A) A firm name that does not include the designations “PC”, “LLC”, “LP”, or “LLP” to indicate the form of legal entity through which the practice of public accountancy is being conducted, or that does not include the full legal name of every owner of such business organization, shall be filed as an assumed business name with the Corporations Division of the Office of the Secretary of State. A copy of the registration of the assumed business name shall be provided to the Board with the application for registration as a firm and with every renewal application.

(B) An assumed business name that is registered with the Corporate Division of the Office of the Secretary of State may be composed in whole or in part of initials. Such abbreviated firm name shall not spell a word or form an acronym that may be misleading to the public. Every assumed business name shall meet the requirements of paragraph (6)(a)(B) of this rule.

(e) **Notice to Board.** A business organization registered as a firm under ORS 673.160 shall provide the following information to the Board:

(A) List of the names and certificate or license numbers of all Oregon licensees employed by the firm at the time of application for registration as a firm and with every renewal application, and

(B) Written notice of any change of firm name, firm address or firm ownership within 30 days of such change.

(7) Board communications and investigations.

(a) Communications from the Board to licensees shall be sent by first class mail, addressed to the licensee at the last official address or to the alternate address furnished to the Board by the licensee.

(b) Licensees who receive any Board communication requesting the licensee to provide a written response shall:

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(A) Provide a written response to the Board within 21 days of the date the Board communication was mailed,

(B) Respond fully and truthfully to inquiries from and comply with all Board requests.

(c) The Board of Accountancy shall provide written notice to licensees of complaints filed against the licensee and of any Board investigation that affects the licensee. Licensees who receive notice of a complaint investigation:

(A) Shall cooperate fully with all Board investigations, including any request to appear to answer questions concerning such investigations, and

(B) Shall not engage in any conduct or activity that would hinder or obstruct a Board investigation.

(8) Business transactions with clients.

(a) Except for business transactions that occur in the ordinary course of business, licensees shall not enter into a business transaction with a client if the licensee and client have differing interests therein unless the client has consented to the transaction after full disclosure of the differing interests in writing. Disclosure in writing shall be made prior to the time the business transaction is accepted.

(b) A loan transaction between a licensee and a client does not require disclosure under this rule if the client is in the business of making loans of the type obtained by the licensee and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness and the transaction is not prohibited by other professional standards.

(9) Notification of change of address, employer or assumed business name. Licensees are required to maintain a current record with the Board of the information described in this rule, and to provide written notice to the Board of any change in such information within 30 days of such change. Written notice required under this rule may be provided by US mail, private delivery service, fax transmittal, e-mail or personal delivery. The information required under this rule will not be accepted over the telephone:

(a) Licensee's current business and residential addresses. If the number of a post office box, mail drop or pick-up service is provided for either address, the licensee must also provide the physical address;

(b) The name and address of licensee's current employer; and

(c) Any assumed business name used by licensee, if licensee is conducting the practice of public accountancy under an assumed business name.

(10) School loan defaults. In accordance with ORS 348.393 to 348.399, the Board shall provide the Oregon State Scholarship Commission ("Commission") with certification and licensing information that may be electronically cross-matched with the Commission's post default database.

(a) The Board shall refuse to issue or renew or shall suspend the certificate or license and permit of any licensee who is in default on any student loan guaranteed or insured by the Commission, or who is not repaying such loan in a satisfactory manner as determined by the Commission and in accordance with federal regulations.

(b) Pursuant to ORS 348.393(3), the Board shall notify a licensee of any action being taken against the licensee at the direction of the Commission, and shall refer the licensee to the Commission for resolution of any dispute regarding school loans.

(c) Upon notification by the Commission and receipt of a release notice that a licensee has met satisfactory borrower repayment status, the Board shall issue, renew, or reinstate the licensee's certificate or license and permit to practice upon compliance with any additional requirements of the Board for issuance, renewal or reinstatement.

(11) Child support defaults. In accordance with ORS 25.750 to 25.783, the Board shall provide the Support Enforcement Division of the Department of Justice with certification and licensing information which may be electronically cross-matched with Support Enforcement Division's records for persons under order of judgment to pay monthly child support and who are in arrears according to ORS 25.750(a), (b) and/or (c).

(a) The Board shall suspend a licensee's certificate or license and permit to practice upon notice from the Support Enforcement Division or the appropriate District Attorney that such licensee is in arrears of any judgment or order requiring the payment of child support and such payment is being enforced under the provisions of ORS 25.080.

(b) Pursuant to ORS 25.762 or 25.765, the Board shall notify the licensee of the action being taken and refer such licensee to the Support Enforcement Division or the District Attorney for resolution of the support payment issue.

(c) Upon notification by the Support Enforcement Division or District Attorney and receipt of a release notice that the conditions resulting in the action have been resolved, the Board shall reinstate the licensee's certifi-

cate or license and permit to practice upon compliance with any additional requirements for issuance, renewal or reinstatement.

(12) State tax defaults. In accordance with ORS 305.385, and upon request by the Department of Revenue (DOR), the Board shall provide DOR with license information for the purpose of determining whether a licensee has neglected or refused to file any tax return, or neglected or refused to pay any tax without filing a petition with DOR as stated in ORS 305.385(4)(a).

(a) The Board shall issue a notice of proposed action against a licensee who is identified by DOR under this rule. The licensee shall be provided with the opportunity for hearing as provided in ORS 183.310 to 183.550 for contested cases.

(b) Upon notification by DOR and receipt of a certificate issued by DOR that the certificate/license holder is in good standing with respect to any returns due and taxes payable to DOR as of the date of the certificate, the Board shall renew or reinstate the certificate or license and permit to practice upon compliance with any additional requirements of the Board for issuance, renewal or reinstatement.

(13) Continuing violations. A violation of any provision of ORS 673.010—673.457 or OAR chapter 801 that remains in place ("continues") without additional conduct on the part of the violator. For example the continued existence of an office sign purporting to offer public accounting services by an unregistered firm would be a continuing violation. Each day of continuance is a separate violation and may be subject to a civil penalty.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.160, 673.410 & 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; 1AB 1-1981, f. 1-6-81, ef. 6-1-81; 1AB 3-1981, f. & ef. 1-6-81; 1AB 2-1984, f. & ef. 5-21-84; 1AB 3-1986, f. & ef. 11-17-86; AB 3-1989, f. & cert. ef. 10-3-89; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 3-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 5-2002 f. 12-27-02, cert. ef. 1-1-03; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2005, f. & cert. ef. 8-12-05

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**Board of Geologist Examiners
Chapter 809**

Adm. Order No.: BGE 1-2005

Filed with Sec. of State: 8-15-2005

Certified to be Effective: 8-15-05

Notice Publication Date: 5-1-05

Rules Amended: 809-010-0025

Subject: This rule amendment identifies the changes in the Board's budget for the 2005-07 biennium.

Rules Coordinator: Susanna R. Knight—(503) 566-2837

809-010-0025

Operating Budget

The Oregon State Board of Geologist Examiners hereby adopts by reference the 2005-07 Biennium Budget of \$330,000.00 covering the period from July 1, 2005, and ending June 30, 2007. With Board approval, the Administrator of the Board may amend budgeted accounts as necessary within the approved budget of \$330,000.00 for the effective operation of the Board. The Board will not exceed the approved 2005-07 Biennium Budget unless registrants are noticed, a public hearing is convened, and this rule is amended as required by ORS Chapter 182.462(1)(2). Copies of the budget are available from the Board's office.

Stat. Auth.: ORS 670.310, 672.705 & 182.462

Stats. Implemented: ORS 672.705 & 1999 OL Ch. 1084

Hist.: BGE 1-1999, f. & cert. ef. 6-17-99; BGE 1-2001, f. & cert. ef. 3-23-01; BGE 2-2003, f. 6-13-03, cert. ef. 7-1-03; BGE 1-2005, f. & cert. ef. 8-15-05

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**Board of Medical Examiners
Chapter 847**

Adm. Order No.: BME 6-2005

Filed with Sec. of State: 7-20-2005

Certified to be Effective: 7-20-05

Notice Publication Date: 6-1-05

Rules Amended: 847-005-0005

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

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

ADMINISTRATIVE RULES

847-005-0005

Fees

(1) The fees for the following license applications, licensee registrations and limited licenses will be effective September 10, 2004 through September 9, 2006 upon adoption:

(a) Doctor of Medicine/Doctor of Osteopathy (MD/DO) Initial License Application — \$350

(b) MD/DO Registration: Active, Active — Military/Public Health, Active — Teleradiology, Inactive, Locum Tenens, and Telemedicine — \$210/year**

(c) Limited License, Institutional Practice, Public Health, SPEX, Visiting Professor, Fellow, Medical Faculty, Postgraduate, Special — \$175

(d) Acupuncture Initial License Application — \$230

(e) Acupuncture Registration: Active, Inactive, and Locum Tenens — \$135/year**

(f) Acupuncture Limited License, Special, Visiting Professor, Postgraduate — \$70

(g) Physician Assistant Initial License Application — \$230

(h) Physician Assistant Registration: Active, Inactive, and Locum Tenens — \$160/year**

(i) Physician Assistant Limited License, Special, Postgraduate — \$70

(j) Podiatrist Initial Application — \$320

(k) Podiatrist Registration: Active, Inactive, and Locum Tenens — \$210/year**

(l) Podiatrist Limited License, Special, Postgraduate — \$175

(2) Effective September 10, 2006 the fees in section (1) to revert to the original fees as shown below:

(a) Doctor of Medicine/Doctor of Osteopathy (MD/DO) Initial License Application — \$375

(b) MD/DO Registration: Active, Active — Military/Public Health, and Active — Teleradiology, Inactive, Locum Tenens, and Telemedicine — \$219/year**

(c) MD/DO Emeritus Registration — \$50/year

(d) Limited License, Institutional Practice, Public Health, SPEX, Visiting Professor, Fellow, Medical Faculty, Postgraduate, Special — \$185

(e) Acupuncture Initial License Application — \$245

(f) Acupuncture Registration: Active, Inactive, and Locum Tenens — \$140/year**

(g) Acupuncture Limited License, Special, Visiting Professor, Postgraduate — \$75

(h) Physician Assistant Initial License Application — \$245

(i) Physician Assistant Registration: Active, Inactive, and Locum Tenens — \$165/year**

(j) Physician Assistant Limited License, Special, Postgraduate — \$75

(k) Podiatrist Initial Application — \$340

(l) Podiatrist Registration: Active, Inactive, and Locum Tenens — \$219/year**

(m) Podiatrist Emeritus Registration — \$50/year

(n) Podiatrist Limited License, Special, Postgraduate — \$185

(o) Miscellaneous: All Fines and Late Fees:

(A) MD/DO Registration Renewal Late Fee — \$150

(B) Acupuncture Registration Renewal Late Fee — \$75

(C) Physician Assistant Registration Renewal Late Fee — \$75

(D) Podiatrist Registration Renewal Late Fee — \$150

(p) Dispensing MD/DO/DPM Failure to Register — \$150

(q) Certification of Grades and Licensure Standing — \$50

(r) Oral Specialty or Competency Examination (\$1,000 deposit required) — Actual costs

(s) Affidavit Processing Fee for Reactivation — \$50

(t) Reissue Certificate of Registration — \$10

(u) Duplicate License — \$25

(v) Name Change for Licensee (includes new license and amended Certificate of Registration) — \$50

(w) Name Change for Applicant with a Limited License (includes amended Certificate of Registration) — \$25

(x) Duplicate of Wallet Size Card for License — \$10

(y) (A) Verification of Licensure-Individual Requests (1-4 Licenses) — \$10 per license

(B) Verification of Licensure-Multiple (5 or more) — \$7.50 per license

(C) Malpractice Report — Individual Requests — \$10 per license/report

(D) Malpractice Report - Multiple (monthly report) — \$15 per report

(E) Disciplinary — Individual Requests — \$10 per license

(F) Disciplinary Report — Multiple (quarterly report) — \$15 per report

(z) Base Service Charge for Copying — \$5 + .20/page

(aa) Record Search Fee (+ copy charges see section (z) of this rule):

(A) Clerical — \$20 per hour*

(B) Administrative — \$30 per hour*

(C) Executive — \$50 per hour*

(D) Medical Consultant — \$75 per hour*

(bb) Data Processing Labels:

(A) Oregon only — \$300

(B) Complete (Oregon & out-of-state) — \$300

(C) MD/DO Registration Renewal — \$150

(cc) Data Processing Lists:

(A) Oregon only — \$150

(B) Complete (Oregon & out-of-state) — \$150

(C) MD/DO Registration Renewal — \$150/year

(dd) Data Order:

(A) Standard Data License Order — \$300

(B) Custom Data License Order — \$400

(C) Address Label Disk — \$100

(ee) Quarterly Lists:

(A) Active MD's/DO's, including MD's/DO's licensed at quarterly Board meeting — \$75 Each

(B) New Physician List (MD's/DO's Licensed at Quarterly Board Meeting) — \$10

(C) Active DPM's, PA's and AC's Lists, including DPM's, PA's, and AC's licensed at quarterly Board meeting — \$10 per list

(ff) Physician Handbook — \$15

(3) All Board fees and fines are non-refundable, and non-transferable.

*Plus photocopying charge above, if applicable.

**Collected biennially except where noted in the Administrative Rules. All active registration fees include annual assessments of \$33.00 for the Diversion Program for Health Professionals and all active MD/DO registration fees include \$10.00 for the Oregon Health and Sciences University Library, and are collected biennially.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265

Hist.: ME 7-1984, f. & ef. 1-26-84; ME 17-1984, f. & ef. 11-5-84; ME 6-1985, f. & ef. 7-30-85; ME 3-1986(Temp), f. & ef. 4-23-86; ME 4-1986, f. & ef. 4-23-86; ME 9-1986, f. & ef. 7-31-86; ME 2-1987, f. & ef. 1-10-87; ME 7-1987(Temp), f. & ef. 1-26-87; ME 9-1987, f. & ef. 4-28-87; ME 25-1987, f. & ef. 11-5-87; ME 9-1988, f. & cert. ef. 8-5-88; ME 14-1988, f. & cert. ef. 10-20-88; ME 1-1989, f. & cert. ef. 1-25-89; ME 5-1989 (Temp), f. & cert. ef. 2-16-89; ME 6-1989, f. & cert. ef. 4-27-89; ME 9-1989(Temp), f. & cert. ef. 8-1-89; ME 17-1989, f. & cert. ef. 10-20-89; ME 4-1990, f. & cert. ef. 4-25-90; ME 9-1990, f. & cert. ef. 8-2-90; ME 5-1991, f. & cert. ef. 7-24-91; ME 11-1991(Temp), f. & cert. ef. 10-21-91; ME 6-1992, f. & cert. ef. 5-26-92; ME 1-1993, f. & cert. ef. 1-29-93; ME 13-1993, f. & cert. ef. 11-1-93; ME 14-1993(Temp), f. & cert. ef. 11-1-93; ME 1-1994, f. & cert. ef. 1-24-94; ME 6-1995, f. & cert. ef. 7-28-95; ME 7-1996, f. & cert. ef. 10-29-96; ME 3-1997, f. & cert. ef. 11-3-97; BME 7-1998, f. & cert. ef. 7-22-98; BME 7-1999, f. & cert. ef. 4-22-99; BME 10-1999, f. & cert. ef. 8-3-99; BME 14-1999, f. & cert. ef. 10-28-99; BME 4-2000, f. & cert. ef. 2-22-00; BME 6-2001(Temp), f. & cert. ef. 7-18-01 thru 11-30-01; BME 10-2001, f. & cert. ef. 10-30-01; BME 8-2003, f. & cert. ef. 4-24-03; BME 16-2003, f. & cert. ef. 10-23-03; BME 17-2004, f. & cert. ef. 9-9-04; BME 6-2005, f. & cert. ef. 7-20-05

Adm. Order No.: BME 7-2005

Filed with Sec. of State: 7-20-2005

Certified to be Effective: 7-20-05

Notice Publication Date: 6-1-05

Rules Adopted: 847-010-0100

Subject: The proposed new rules, per Chapter 987 Oregon Laws 2001, state the requirement for licensees of the Board to obtain six hours of continuing medical education in the subjects of pain management and/or treatment of terminally ill and dying patients, and a one hour pain management course specific to Oregon provided by the Pain Management Commission of the Department of Human Services. The required CME must be obtained prior to January 2, 2009.
Rules Coordinator: Diana M. Dolstra—(503) 229-5873, ext. 223

847-010-0100

Mandatory Pain Management Education

(1) All licensees of the Board of Medical Examiners, except the licensees listed in section (2) of this rule, will complete mandatory continuing medical education (CME) in the subjects of pain management and/or the treatment of terminally ill and dying patients as follows:

(a) A one-hour pain management course specific to Oregon provided by the Pain Management Commission of the Department of Human Services; and

(b) A minimum of 6 (six) continuing medical education credit hours in the subjects of pain management and/or the treatment of terminally ill and dying patients. Any combination of CME coursework focusing on pain

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management and/or treatment of terminally ill and dying patients may be used to fulfill this requirement.

(2) Licensees holding the following types of licenses shall not be required to meet this requirement:

- (a) Lapsed license;
- (b) Telemedicine license; or
- (c) Teleradiology license.

(3) The required CME must be completed after January 1, 2000 and before January 2, 2009.

(4) Licensees must be prepared to provide documentation of CME if requested by the Board.

(5) All applicants granted a license after January 2, 2009, excepting those with a type of license listed in Section (2), must obtain the required CME coursework within twelve months of the date the Board granted licensure.

Stat. Auth.: ORS 677.265, Ch. 987 OL 2001
Stats. Implemented: ORS 677.228, 677.510
Hist.: BME 7-2005, f. & cert. ef. 7-20-05

Adm. Order No.: BME 8-2005

Filed with Sec. of State: 7-20-2005

Certified to be Effective: 7-20-05

Notice Publication Date: 6-1-05

Rules Amended: 847-020-0130, 847-020-0160, 847-020-0170

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

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

847-020-0130

Basic Requirements for Licensure of a Foreign Medical School Graduate

(1) The following requirements must be met in lieu of graduation from a school of medicine approved by the Liaison Committee on Medical Education or the Committee on the Accreditation of the Canadian Medical Schools of the Canadian Medical Association in order to qualify under ORS 677.100.

(2) The requirements for licensure of the foreign medical school graduate are as follows:

(a) Must speak English fluently and write English legibly.

(b) Must have graduated from a foreign school of medicine that is chartered in the country in which the school is located, after attendance of at least four full terms of instruction of eight months each, with all courses having been completed by physical on-site attendance in the country in which the school is chartered. This requirement may be waived for any applicant for licensure who has graduated from a foreign school of medicine, and has substantially complied with the attendance requirements provided herein, and has been certified by a specialty board recognized by the American Board of Medical Specialties. If any of the clinical clerkships were taken in an institution in a country other than that in which the school is licensed, the institutions in which the clerkships were served must provide a certificate to prove the time spent and the satisfactory completion of the clerkships. After June 30, 1988, clinical clerkships served in the U.S. or Canada shall be taken only in institutions which conduct residencies approved by the Accreditation Council for Graduate Medical Education or the College of Family Physicians of Canada or the Royal College of Physicians and Surgeons of Canada or the American Osteopathic Association in the specific subject of the clerkship. The foreign school of medicine must be listed in the World Directory of Medical Schools published by the World Health Organization or any other such foreign school of medicine approved by the Oregon Board of Medical Examiners pursuant to OAR 847-031-0001, 847-031-0010, 847-031-0020, 847-031-0030 and 847-031-0040.

(c) Must have obtained the Standard Educational Commission for Foreign Medical Graduates Certificate issued by the Educational Commission for Foreign Medical Graduates. This requirement may be waived if accredited postgraduate training was completed in Canada, or prior to the enforcement of the ECFMG certification, or if the applicant has been certified by a specialty board recognized by the American Board of Medical Specialties. In lieu of the ECFMG certificate, Fifth Pathway applicants shall show evidence of passing the examination pursuant to Oregon standards.

(d) Must have satisfactorily completed an approved internship and/or residency (or clinical fellowship) in the United States or Canada of not less

than three years of progressive training in not more than two specialties in not more than two training programs accredited for internship, residency or fellowship training by the Accreditation Council for Graduate Medical Education or the College of Family Physicians of Canada or the Royal College of Physicians and Surgeons of Canada or the American Osteopathic Association. A valid certificate issued by a specialty board recognized by the American Board of Medical Specialties may be used in lieu of the three years of post graduate training required by subsection (d) of this section.

(e) A graduate of a school of medicine approved by the Oregon Board of Medical Examiners pursuant to OAR 847-031-0001, 847-031-0010, 847-031-0020, 847-031-0030 and 847-031-0040 must have satisfactorily completed not less than one year of approved training in the United States or Canada in not more than one hospital accredited for internship, residency or fellowship training by the Accreditation Council for Graduate Medical Education or the Canadian Medical Association or the Royal College of Physicians and Surgeons of Canada.

(f) Must pass a written licensure examination as provided in ORS 677.110 and OAR 847-020-0170.

(3) If a foreign medical graduate has met the basic requirements for licensure and wishes to pursue further postgraduate training beyond the postgraduate level (3) three year, or wishes to practice medicine in this state, an unlimited license must be applied for and obtained.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.110

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 8-2002, f. & cert. ef. 7-17-02; BME 10-2004(Temp), f. & cert. ef. 4-22-04 thru 10-15-04; BME 15-2004, f. & cert. ef. 7-13-04; BME 8-2005, f. & cert. ef. 7-20-05

847-020-0160

Letters and Official Grade Certifications to be Submitted for Licensure

The applicant, a graduate of an approved school of medicine or foreign medical graduate, must request official letters sent to the Board directly from:

(1) The Dean of the Medical/Osteopathic School: This letter is required in addition to the certification on the application form. A copy of the Dean's Letter of Recommendation which shall include a statement concerning the applicant's moral and ethical character and overall performance as a medical student.

(2) The Program Director, Chairman or other official of the Fifth Pathway Hospital, if such applies: A currently dated original letter (a copy if not acceptable), sent directly from the hospital in which such training was served, which shall include an evaluation of overall performance and specific beginning and ending dates of training.

(3) The Director of Medical Education, Chairman or other official of the internship, residency and fellowship hospitals in U.S. and foreign countries sent directly from the hospitals in which the postgraduate training was served, which shall include an evaluation of overall performance and specific beginning and ending dates of training.

(4) The Director or other official for practice and employment in hospitals, clinics, etc. in the U.S. and foreign countries: A currently dated original letter (a copy is not acceptable), sent directly from the hospital/clinic which shall include an evaluation of overall performance and specific beginning and ending dates of practice and employment, for the past ten (10) years only. For physicians who have been or are in solo practice without hospital privileges at the time of solo practice, provide three reference letters from physicians in the local medical community who are familiar with the applicant's practice and who have known the applicant for more than six months.

(5) The Executive Secretary of all State Boards in the United States or Canada where the applicant has ever been licensed; regardless of status, i.e., current, lapsed, never practiced there: The currently dated original letter (a copy is not acceptable), sent directly from the boards, shall show license number, date issued, grades if applicable and status.

(6) Official Grade Certifications: If such applies, an official grade certification is required directly from the National Board of Medical/Osteopathic Examiners, the Medical Council of Canada or the Federation of State Medical Boards.

(7) Disciplinary Inquiries Form: Completion of this form required for processing through the American Medical Association and Federation of State Medical Boards.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.100, 677.110 & 677.120

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 8-2005, f. & cert. ef. 7-20-05

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847-020-0170

Written Examination, SPEX Examination and Personal Interview

(1) After complying with OAR 847-020-0110 through OAR 847-020-0200 the applicant applying for licensure must have passed one of the following examinations or combinations of examinations:

(a) Federation Licensing Examination (FLEX) Component I and FLEX Component 2.

(b) National Board of Medical Examiners (NBME) Part I and Part II and Part III.

(c) National Board of Medical Examiners (NBME) Part I or United States Medical Licensing Examination (USMLE) Step 1, and NBME Part II or USMLE Step 2 and NBME Part III or USMLE Step 3.

(d) NBME Part I or USMLE Step 1, and NBME Part II or USMLE Step 2, and FLEX Component 2.

(e) FLEX Component 1 and USMLE Step 3. A score of 75 or above must be achieved on FLEX Component 1 and the score achieved on USMLE Step 3 must be equal to or exceed the figure established by the Federation as a recommended passing score.

(f) The score achieved on each Step, Part or Component must equal or exceed the figure established by the USMLE Program, the National Board of Medical Examiners or the Federation of State Medical Boards as a passing score. All Steps, Parts or Components listed in OAR 847-020-0170 (1) (a)-(f) must be administered prior to January 2000, except for applicants who participated in and completed a combined MD/DO/PhD program; or

(g) The National Board of Osteopathic Medical Examiners (NBOME) examination or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX) or any combination of their parts; or

(h) USMLE Steps 1, 2, and 3. All three Steps of USMLE, or all three Levels of the NBOME examination or COMLEX or any combination of the two, must be passed within a seven-year period which begins when the first Step or Level, either Step 1 or Step 2 or Level 1 or Level 2, is passed. The score achieved on each Step must equal or exceed the figure established by the Federation as a recommended passing score, and the score achieved on each Level must equal or exceed the figure established by the National Board of Osteopathic Medical Examiners.

(A) An applicant who has not passed all three Steps or Levels within the seven-year period may request an exception to the seven-year requirement if he/she suffered from a documented significant health condition which by its severity would necessarily cause a delay to the applicant's medical or osteopathic study, or the applicant has participated in a combined MD/DO/PhD program.

(B) Effective April 23, 2004, to be eligible for licensure, an applicant must have passed USMLE Step 3 or NBOME's COMLEX Level 3 within four attempts whether for Oregon or any other state. After the third failed attempt, the applicant must have completed one additional year of postgraduate training in the United States or Canada prior to readmission to the examination. The Board must approve the additional year of training to determine whether the applicant is eligible for licensure. The applicant, after completion of the required year of training, must have passed USMLE Step 3 or COMLEX Level 3 on their fourth and final attempt. If the fourth attempt of USMLE Step 3 is failed, the applicant is not eligible for Oregon licensure. If the applicant did not complete a year of training approved by the Board between the third and fourth attempt to pass USMLE Step 3 or COMLEX Level 3, the applicant is not eligible for licensure.

(2) USMLE Step 3 may be taken during the first year of postgraduate training, or after the first year of postgraduate training has been completed. A Limited License, Postgraduate will be required for training beyond the postgraduate 1 level if the USMLE is not yet passed.

(3) The applicant will not be allowed to take the USMLE for this state nor apply for licensure in this state if the FLEX has been previously failed four or more times.

(4) The applicant must have passed the written examination (FLEX) under the following conditions:

(a) The applicant who has taken the FLEX examination (Day I, II, and III) administered between June 1968 and December 1984 must have taken the entire examination at one sitting. The applicant who has taken the FLEX examination (Component 1 and Component 2), first administered in June 1985, was not required to take both Components 1 and 2 of the FLEX examination at one sitting. Both must have been passed within seven years of the first attempt.

(b) The applicant may not have taken the FLEX examination more than a total of four times, whether in Oregon or other states, whether the components were taken together or separately. After the third failed attempt, the applicant must have satisfactorily completed one year of

approved training in the United State or Canada prior to having taken the entire FLEX examination at one sitting on the fourth and final attempt.

(c) Only the applicant's scores on the most recently taken FLEX examination will be considered to determine eligibility.

(5) The applicant may also be required to pass the Special Purpose Examination (SPEX). This requirement may be waived if:

(a) The applicant has within ten years of filing an application with the Board, completed an accredited one year residency, or an accredited or Board approved one year clinical fellowship;

(b) The applicant has within ten years of filing an application with the Board, been certified or recertified by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association;

(c) The applicant has received an appointment as Professor or Associate Professor at the Oregon Health and Sciences University; and

(d) Has not ceased the practice of medicine for a period of 12 or more consecutive months. The SPEX examination may be waived if the applicant, after ceasing practice for a period of 12 or more consecutive months, has subsequently:

(A) Completed an accredited one year residency, or

(B) Completed an accredited or Board approved one year clinical fellowship; or

(C) Been certified or recertified by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(D) Obtained continuing medical education to the Board's satisfaction.

(6) The applicant, who fails the SPEX examination three times, whether in Oregon or other states, shall successfully complete an accredited one year residency or an accredited or approved one-year clinical fellowship before retaking the SPEX.

(a) However, after the first or second failed attempt, the Board may allow the applicant to take an oral specialty examination, at the applicant's expense, to be given by a panel of physicians in such specialty. The applicant shall submit the cost of administering the oral examination prior to the examination being scheduled.

(b) If an oral specialty examination is requested by the applicant, an Examination Panel of at least three physicians shall be appointed.

(c) The examination shall include questions which test basic knowledge and also test for knowledge expected of a physician with a practice similar in nature to examinee's. The panel shall establish a system for weighing their score for each question in the examination. After it is prepared, the examination shall be submitted to the Board for review and approval.

(d) The Board shall require a passing grade of 75 on the oral specialty examination.

(e) If such oral examination is passed, the applicant would be granted a license limited to the applicant's specialty. If failed, the license would be denied and the applicant would not be eligible for licensure.

(7) The Limited License, SPEX may be granted for a period of 6 months and permits the licensee to practice medicine only until the grade results of the Special Purpose Examination are available and the applicant completes the initial registration process. The Limited License, SPEX would become invalid should the applicant fail the SPEX examination and the applicant, upon notification of failure of the examination, must cease practice in this state as expeditiously as possible, but not to exceed two weeks after the applicant receives notice of failure of the examination.

(8) After the applicant has met all requirements for licensure, the applicant may be required to appear before the Board for a personal interview regarding information received during the processing of the (application). The interview shall be conducted during a regular meeting of the Board. An applicant who fails to cancel a scheduled interview at least one week prior to such interview, or who confirms and does not appear, shall be rescheduled only after paying a rescheduling fee prior to the filing deadline date.

(9) All of the rules, regulations and statutory requirements pertaining to the medical school graduate shall remain in full effect.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.110

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 5-2003, f. & cert. ef. 1-27-03; BME 10-2003, f. & cert. ef. 5-2-03; BME 14-2003(Temp), f. & cert. ef. 9-9-03 thru 3-1-04; BME 3-2004, f. & cert. ef. 1-27-04; BME 7-2004, f. & cert. ef. 4-22-04; BME 15-2004, f. & cert. ef. 7-13-04; BME 8-2005, f. & cert. ef. 7-20-05

Adm. Order No.: BME 9-2005

Filed with Sec. of State: 7-20-2005

ADMINISTRATIVE RULES

Certified to be Effective: 7-20-05

Notice Publication Date: 6-1-05

Rules Amended: 847-035-0030

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

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

847-035-0030

Scope of Practice

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Perform all procedures that an Oregon-certified First Responder can perform;
- (b) Ventilate with a non-invasive positive pressure delivery device;
- (c) Insert a cuffed pharyngeal airway device in the practice of airway maintenance;
- (d) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;
- (e) Provide care for suspected shock, including the use of the pneumatic anti-shock garment;
- (f) Provide care for suspected medical emergencies, including:
 - (A) Obtaining a capillary blood specimen for blood glucose monitoring;

(B) Administer epinephrine by subcutaneous injection or automatic injection device for anaphylaxis;

(C) Administer activated charcoal for poisonings; and

(D) Administer aspirin for suspected myocardial infarction.

(g) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator;

(h) Transport stable patients with saline locks, heparin locks, foley catheters, or in-dwelling vascular devices;

(i) Perform other emergency tasks as requested if under the direct visual supervision of a physician and then only under the order of that physician;

(j) Complete a clear and accurate prehospital emergency care report form on all patient contacts;

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

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

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

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

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

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

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

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

(c) Initiate and maintain an intravenous infusion;

(d) Initiate saline or similar locks;

(e) Draw peripheral blood specimens;

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

(A) Physiologic isotonic crystalloid solution.

(B) Vasoconstrictors:

(i) Epinephrine 1:10,000,

(ii) Vasopressin;

(C) Antiarrhythmics:

(i) Atropine sulfate,

(ii) Lidocaine,

(iii) Amiodarone;

(D) Antidotes:

(i) Naloxone hydrochloride;

(E) Antihypoglycemics:

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15-04 thru 4-15-05; BME 2-2005, f. & cert. ef. 1-27-05; BME 5-2005, f. & cert. ef. 4-21-05; BME 9-2005, f. & cert. ef. 7-20-05

- (i) Hypertonic glucose;
- (ii) Glucagon;
- (F) Vasodilators:
 - (i) Nitroglycerine;
- (G) Nebulized bronchodilators:
 - (i) Albuterol,
 - (ii) Ipratropium bromide;
- (H) Analgesics:
 - (i) Morphine,
 - (ii) Nalbuphine Hydrochloride,
 - (iii) Ketorolac tromethamine;
- (I) Antihistamine:
 - (i) Diphenhydramine;
- (J) Diuretic:
 - (i) Furosemide;
 - (g) Insert an orogastric tube;
- (h) Maintain during transport any intravenous medication infusions or other procedures which were initiated in a medical facility, and if clear and understandable written and verbal instructions for such maintenance have been provided by the physician, nurse practitioner or physician assistant at the sending medical facility;

- (i) Perform cardiac defibrillation with a manual defibrillator.

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

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

- (b) Initiate the following airway management techniques:

(A) Endotracheal intubation;
(B) Tracheal suctioning techniques;
(C) Percutaneous cricothyrotomy; and
(D) Transtracheal jet insufflation which may be used when no other mechanism is available for establishing an airway.

- (c) Initiate a nasogastric tube;

(d) Initiate electrocardiographic monitoring and interpret presenting rhythm;

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

- (f) Perform emergency cardioversion in the compromised patient;

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

(h) Initiate needle thoracentesis for tension pneumothorax in a pre-hospital setting;

(i) Initiate placement of a femoral intravenous line when a peripheral line cannot be placed;

(j) Initiate placement of a urinary catheter for trauma patients in a pre-hospital setting who have received diuretics and where the transport time is greater than thirty minutes; and

(k) Initiate or administer any medications or blood products under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician.

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

- (a) Designing the supervising physician and agent application;

- (b) Approving a supervising physician or agent; and

(c) Investigating and disciplining any EMT or First Responder who violates their scope of practice.

(d) The Section shall provide copies of any supervising physician or agent applications and any EMT or First Responder disciplinary action reports to the Board upon their request.

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

Stat. Auth.: ORS 682.245

Stats. Implemented: ORS 682.245

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

Adm. Order No.: BME 10-2005

Filed with Sec. of State: 7-20-2005

Certified to be Effective: 7-20-05

Notice Publication Date: 6-1-05

Rules Amended: 847-080-0018

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

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

847-080-0018

Endorsement, Oral Examination, Competency Examination and Personal Interview

(1) The applicant shall base an application upon certification by the National Board of Podiatric Medical Examiners.

(a) All three Parts of the NBPME examination must be passed within a seven-year period which begins when the first Part, either Part I or Part II, is passed. The score achieved on each Part must equal or exceed the figure established by the National Board of Podiatric Medical Examiners as a recommended passing score.

(b) An applicant who has not passed all three Parts within the seven-year period may request an exception to the seven-year requirement if he/she suffered from a documented significant health condition which by its severity would necessarily cause a delay to the applicant's podiatric study.

(c) Effective July 25, 2005, to be eligible for licensure, applicants must have passed NBPME Part III within three attempts whether for Oregon or for any other state. After the third failed attempt, the applicant must have completed one additional year of postgraduate training in the United States prior to readmission to the examination. The Board must approve the additional year of training to determine whether the applicant is eligible for licensure. The applicant, after completion of the required year of training, must have passed Part III on their fourth and final attempt. If the fourth attempt of Part III is failed, the applicant is not eligible for Oregon licensure. If the applicant did not complete a year of training approved by the Board between the third and fourth attempt to pass Part III, the applicant is not eligible for licensure.

(2) The applicant may also be required to pass a competency examination in podiatry. The competency examination may be waived if, within ten years of filing the application with the Board, the applicant has:

(a) Passed the examination administered by the National Board of Podiatric Medical Examiners; or

(b) Been certified or recertified by the American Board of Podiatry Surgery, or the American Board of Podiatric Orthopedics and Primary Podiatric Medicine; or

(c) Completed an approved one-year residency; and

(d) Has not ceased the practice of podiatry for a period of 12 or more consecutive months.

(3) After the applicant has met all requirements for licensure, the applicant may be required to appear before the Council for a personal interview regarding information received during the processing of the application. The interview or oral examination shall be conducted during a regular meeting of the Council or the Board. An applicant who fails to cancel a scheduled interview at least one week prior to such interview, or who confirms and does not appear, shall pay a rescheduling fee prior to the next filing deadline date. Rescheduling of the interview is contingent upon receipt of the above fee. (Refer to OAR 847-005-0005 for fees.)

(4) Licensure shall not be granted until all requirements of OAR 847-080-0002 through 847-080-0020 are completed satisfactorily.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.175

Hist.: ME 6-1986, f. & ef. 4-23-86; ME 17-1987, f. & ef. 8-3-87; ME 23-1989(Temp), f. & cert. ef. 10-20-89; ME 3-1990, f. & cert. ef. 1-29-90; ME 13-1992, f. & cert. ef. 10-22-92; ME 8-1994, f. & cert. ef. 4-29-94; ME 11-1996, f. & cert. ef. 10-29-96; BME 2-1999, f. & cert. ef. 1-26-99; BME 4-1999, f. & cert. ef. 2-17-99; BME 10-2005, f. & cert. ef. 7-20-05

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Board of Naturopathic Examiners Chapter 850

Adm. Order No.: BNE 6-2005
Filed with Sec. of State: 8-15-2005
Certified to be Effective: 8-15-05
Notice Publication Date: 5-1-05
Rules Amended: 850-010-0212
Subject: Clarifies the educational requirements for all injection therapies.
Rules Coordinator: Anne Walsh—(971) 673-0193

850-010-0212

Education Requirements for Injections/EDTA Chelation

(1) Before using therapeutic injections of vitamins and minerals, or preventive injections of any substance, whether intramuscular (IM) or subcutaneous (SC) or intravenous (IV), licensee must provide proof of Board approved qualifying continuing education prior to using these applications as set forth in this rule, or proof of Board approved qualifying education received at an approved medical institution equivalent to the prescribed continuing education.

(2) Non-IV therapeutic injections of vitamins or minerals require a one-time 2 hour qualifying education on this subject.

(3) IV therapeutic injections of vitamins or minerals require a one-time 12 hour qualifying education on this subject.

(4) Preventive injections (IM, SC, IV) require an additional one-time 4 hours of qualifying education in addition to the CE hours noted in OAR 850-010-0212(2) and (3).

(5) The use of any IV chelation therapy requires 12 hours of Board approved qualifying education in addition to the education required in (2), (3) and (4) of this rule.

(6) Licensee must stay current in IV chelation training. Current means licensee has completed the education and obtained a certificate of competence within the last five years.

(7) Qualifying chelation therapy education must be provided by faculty with at least five years of experience in IV chelation therapy and current training approved by the Board.

(8) The qualifying education must contain all of the following:

- (a) Current/ historical research on IV chelation therapy,
- (b) Indications/contraindications of IV chelation therapy,
- (c) IV Chelation therapy side effects and toxicity,
- (d) IV Chelation therapy and practical application,
- (e) IV solutions,
- (f) Initial evaluation and treatment monitoring requirements,
- (g) Frequency of IV treatment and remineralization,
- (h) Charting requirements, standards of care, office procedures, consent to treat, nutrition and lifestyle recommendations during treatment,
- (i) Heavy metal toxicity and disease,
- (j) Practical on mixing and administering IV Chelation solutions,
- (k) Examination for certification (exam subject to Board approval).

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Hist.: BNE 6-2004, f. & cert. ef. 6-10-04; BNE 6-2005, f. & cert. ef. 8-15-05

Board of Tax Practitioners Chapter 800

Adm. Order No.: BTP 2-2005
Filed with Sec. of State: 7-28-2005
Certified to be Effective: 8-1-05
Notice Publication Date: 4-1-05
Rules Amended: 800-020-0020
Subject: The amendment(s) to OAR 800-020-0020(4) would create a one-part/one-score consultant examination by combining the current Part A & Part B of the consultants examination, which is currently a two-part/two-score examination. This proposal fosters an increase in a consultant examinee's chances of successful passage of the consultant's examination, allows for an increase in the number of consultants able to provide income tax services in Oregon as well as creates an increase in staff's efficiencies in processing examinations. The consultant's examination tests an individual's ability to provide advanced services to consumers concerning their personal income taxes. In addition, the proposed changes will continue to

ensure that Oregon tax professionals are competent in their professional activities as stated in the agency's mission.

The amendment(s) to OAR 800-020-0020(6, 7 & 8) are for general "housekeeping" & "maintenance" as well as to change language to better reflect the "norm" in industry standards and the practices of other state agencies.

Rules Coordinator: Monica J. Leisten—(503) 378-4034

800-020-0020

Examinations

(1) Licensing examinations shall be scheduled as the Board deems appropriate.

(2) Tax preparer and tax consultant applicant's examination shall be written. Questions shall be so constructed as to measure the applicant's knowledge of Oregon and federal personal income tax law, theory and practice; the provisions of ORS 673.605 to 673.735 and the **Code of Professional Conduct**. The tax consultant examination shall require a higher standard of knowledge.

(3) A tax preparer applicant must have at least a 75 percent grade or score on the entire examination to pass.

(4) A tax consultant applicant must have at least a 75 percent grade or score on the entire examination to pass.

(5) An agent holding a valid treasury card who is enrolled to practice before the Internal Revenue Service must have at least a 75 percent grade or score on the consultant's state-only portion of the examination to pass.

(6) Pass or fail results, including scores, of the examination shall be mailed to each examination candidate, in writing by regular US Postal Service. Results will not be given by any other means.

(7) No review of examination questions by the applicant will be granted.

(8) An applicant who fails to pass the examination shall be eligible for a succeeding examination upon making application and payment of the examination fee.

(9) An applicant who passes an examination must apply for licensing within 60 days from the examination date. If application for license is not made within 60 days, the applicant must be reexamined, unless there are verifiable circumstances beyond the reasonable control of the applicant, subject to the discretion of the Board.

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

Stat. Auth.: ORS 673

Stats. Implemented: ORS 673.605 - 673.740 & 673.990

Hist.: TSE 8, f. & ef. 5-19-76; TSE 10(Temp), f. & ef. 11-29-76 thru 3-28-77; TSE 11, f. & ef. 4-6-77; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1980, f. & ef. 5-30-80; TSE 1-1981 (Temp), f. 1-2-81, ef. 1-5-81; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1983, f. & ef. 3-10-83; TSE 1-1984(Temp), f. & ef. 12-20-84; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1985(Temp), f. & ef. 6-11-85; TSE 2-1986, f. & ef. 7-14-86; TSE 4-1987, f. & ef. 10-2-87; TSE 1-1989, f. & cert. ef. 6-8-89; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 2-2004, f. 8-12-04 cert. ef. 8-31-04; BTP 2-2005, f. 7-28-05, cert. ef. 8-1-05

Bureau of Labor and Industries Chapter 839

Adm. Order No.: BLI 14-2005
Filed with Sec. of State: 7-22-2005
Certified to be Effective: 7-22-05

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, Student Housing, Phase Four, Project #2005-01*, dated April 14, 2005, for the period of April 18, 2005 through September 30, 2005.

(b) *Special Prevailing Wage Rate Determination for Residential Project, "Civic Redevelopment," Project #2005-03*, dated May 26, 2005, for the period of June 1, 2005 through June 30, 2006.

(c) *Special Prevailing Wage Rate Determination for Residential Project, Prairie House, Project #2005-04*, dated May 26 2005, for the peri-

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od of June 1, 2005 through June 30, 2006.

(d) *Special Prevailing Wage Rate Determination for Residential Project, Ariel South, Project #2005-05*, dated June 20, 2005, for the period of June 21, 2005 through June 30, 2006.

(e) *Special Prevailing Wage Rate Determination Extension for Residential Project, Headwaters Apartments, Project #2004-06*, dated October 14, 2004. Rate extension dated June 20, 2005, for the period of July 1, 2005 through June 30, 2006.

(f) *Special Prevailing Wage Rate Determination Extension for Residential Project, Madrone Street Affordable Housing, Project #2004-01*, dated April 22, 2004. Rate extension dated June 29, 2005 for the period of July 1, 2005 through December 31, 2005.

(g) *Special Prevailing Wage Rate Determination Extension for the Residential Project, "2801 N. Oak," Project #2005-02*, dated April 29, 2005. Rate extension dated June 29, 2005 for the period of July 1, 2005 through July 31, 2005.

(h) *Special Prevailing Wage Rate Determination for Residential Project, Tri-Harbor Landing Apartments, Project #2005-06*, dated July 18, 2005, for the period of July 21, 2005 through June 30, 2006.

(i) *Special Prevailing Wage Rate Determination for Residential Project, Sunflower Park Apartments, Project #2005-07*, dated July 18, 2005, for the period of July 21, 2005 through June 30, 2006.

(j) *Amended Special Prevailing Wage Rate Determination for Residential Project, Prairie House, Project #2005-04*, dated July 20, 2005, for the period of July 22, 2005 through June 30, 2006.

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

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

Stat. Auth.: ORS 279C.815

Stats. Implemented: ORS 279C.815

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

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Adm. Order No.: BLI 15-2005

Filed with Sec. of State: 8-9-2005

Certified to be Effective: 8-10-05

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—(971) 673-0784

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, Student Housing, Phase Four, Project #2005-01*, dated April 14, 2005, for the period of April 18, 2005 through September 30, 2005.

(b) *Special Prevailing Wage Rate Determination for Residential Project, "Civic Redevelopment," Project #2005-03*, dated May 26, 2005, for the period of June 1, 2005 through June 30, 2006.

(c) *Special Prevailing Wage Rate Determination for Residential Project, Prairie House, Project #2005-04*, dated May 26 2005, for the period of June 1, 2005 through June 30, 2006.

(d) *Special Prevailing Wage Rate Determination for Residential Project, Ariel South, Project #2005-05*, dated June 20, 2005, for the period of June 21, 2005 through June 30, 2006.

(e) *Special Prevailing Wage Rate Determination Extension for Residential Project, Headwaters Apartments, Project #2004-06*, dated October 14, 2004. Rate extension dated June 20, 2005, for the period of July 1, 2005 through June 30, 2006.

(f) *Special Prevailing Wage Rate Determination Extension for Residential Project, Madrone Street Affordable Housing, Project #2004-01*, dated April 22, 2004. Rate extension dated June 29, 2005 for the period of July 1, 2005 through December 31, 2005.

(g) *Special Prevailing Wage Rate Determination for Residential Project, Tri-Harbor Landing Apartments, Project #2005-06*, dated July 18, 2005, for the period of July 21, 2005 through June 30, 2006.

(h) *Special Prevailing Wage Rate Determination for Residential Project, Sunflower Park Apartments, Project #2005-07*, dated July 18, 2005, for the period of July 21, 2005 through June 30, 2006.

(i) *Amended Special Prevailing Wage Rate Determination for Residential Project, Prairie House, Project #2005-04*, dated July 20, 2005, for the period of July 22, 2005 through June 30, 2006.

(j) *Special Prevailing Wage Rate Determination for Residential Project, Quail Run Apartments Project #2005-08*, dated for August 9, 2005, for the period of August 10, 2005 through June 30, 2006.

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

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

Stat. Auth.: ORS 279C.815

Stats. Implemented: ORS 279C.815

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

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Department of Administrative Services

Chapter 125

Adm. Order No.: DAS 9-2005

Filed with Sec. of State: 8-3-2005

Certified to be Effective: 8-3-05

Notice Publication Date: 2-1-05

Rules Amended: 125-246-0100, 125-246-0110, 125-246-0120, 125-246-0170, 125-246-0560, 125-246-0575, 125-247-0010, 125-247-0261, 125-247-0270, 125-247-0287, 125-249-0160, 125-249-0310, 125-249-0910

Subject: On November 23, 2004, the Department of Administrative Services filed new Public Contracting Rules to implement the Public Contracting Code, ORS 279ABC, for State agencies subject to DAS purchasing authority. Several minor corrections are now needed for clarity and accuracy in the Rules. These amendments will correct the Rules. These amendments correct errors, duplication, references, and unnecessary verbiage, without significantly altering the meaning of the Rules.

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

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Department adopts these Rules, including but not limited to selected and adapted Public Contract Model Rules. The Public Contract Model Rules adopted by the Attorney General do not apply to the Department or the Agencies. 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) Except for Section (5) of this Rule and OAR 125-246-0560(10), 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 and Old Contracts.

(a) "Transitional Contracts" means all Public Contracts first advertised before March 1, 2005, but not entered into until on or after March 1, 2005.

(b) "Old Contracts" means all Public Contracts entered into before March 1, 2005.

(c) Oregon Laws 2005, chapter 103, section 39 provides in part: "Statutes repealed by section 332, chapter 794, Oregon Laws 2003, and rules that expire under or are repealed effective March 1, 2005, pursuant to section 334, chapter 794, Oregon laws 2003, continue to apply to public contracts, and to the solicitation of public contracts, that are first advertised, but if not advertised then entered into, before March 1, 2005, to all protests concerning those solicitations, and to the judicial review of those solicitations and protests. However, an amendment or change to the work, made on or after March 1, 2005, of a public contract must comply with those provisions of chapter 794, Oregon Laws 2003, and rules adopted thereunder that govern the authority to make those amendments or changes and that regulate those amendments or changes. ... As used in this subsection, 'solicitation' means contracting processes that occur before contract formation." This provision is hereinafter referred to as "Section 39."

(d) Pursuant to Section 39, the rules repealed by section 332, chapter 794, Oregon Laws 2003 (Old Rules) will continue to apply to Transitional and Old Contracts, including: Solicitations, if any, as defined in Section 39 and Contract Administration as defined in the Old Rules, except for Amendments and the related authority for Amendments. (See OAR 125-246-0560(10))

(e) These Rules, Divisions 246 through 249 apply to Amendments and related authority for Amendments of Transitional and Old Contracts, as set forth in OAR 125-246-0560(10).

(f) 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 & OL 2005, Ch. 103, Sec. 39

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; DAS 7-2005, f. & cert. ef. 6-6-05; DAS 9-2005, f. & cert. ef. 8-3-05

125-246-0110

Definitions

As used in the Public Contracting Code and these Rules, unless the context or a specifically applicable definition requires otherwise:

(1) "Addendum" or "Addenda" means an addition or deletion to, a material change in, or general interest explanation of a Solicitation Document.

(2) "Adequate" is defined in ORS 279C.305 and means sufficient to control the performance of the Work and to ensure satisfactory quality of construction by the contracting agency personnel.

(3) "Advantageous" means a judgmental assessment by the Agency of the Agency's best interests.

(4) "Advocate for Minority, Women and Emerging Small Business" means the individual appointed by the Governor to advise the Governor, Legislature and Director's Office on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Advocate oversees the resolution of business concerns with Agencies impacting certified disadvantaged, minority, women and emerging small businesses (DMWESB). The Advocate is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to DMWESB firms certified by the Office of Minority, Women and Emerging Small Businesses pursuant to ORS 200.025.

(5) "Administering Agency" means an Agency that solicits and establishes the Original Contract for Procurement of Supplies and Services or Public Improvements in a Cooperative Procurement.

(6) "Affected Person" or "Affected Offeror" means a Person whose ability to participate in a Procurement is adversely impaired by an Agency decision.

(7) "Affirmative Action" is defined in ORS 279A.100 and means a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability.

(8) "Agency" means those agencies of the State of Oregon that are subject to the procurement authority of the Director of the Department pursuant to ORS 279A.050 and 279A.140. This term includes the Department when the Department is engaged in Public Contracting. Nothing in this definition or the use of this term in these Rules conveys any authority to an Agency. An Agency is authorized only through a delegation of authority pursuant to OAR 125-246-0170.

(9) "Architect" is defined in ORS 279C.100 and means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms "architect," "licensed architect" and "registered architect.

(10) "Architectural, Engineering and Land Surveying Services" is defined in ORS 279C.100 and collectively means professional services that are required to be performed by an architect, engineer or land surveyor. "Architectural, Engineering and Land Surveying Services" includes "Architectural, Engineering or Land Surveying Services," separately or any combination thereof, as appropriate within the context of a Rule.

(11) "Architectural, Engineering and Land Surveying Services and Related Services" is defined in ORS 279C.100 and 279C.100(6) and collectively means professional services that are required to be performed by an architect, engineer or land surveyor and Related Services. "Related Services" means services that are related to the planning, design, engineering or oversight of Public Improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services. "Architectural, Engineering and Land Surveying Services and Related Services" includes "Architectural, Engineering or Land Surveying Services or Related Services, separately or in any combination thereof, as appropriate within the context of a Rule.

(12) "As-Is, Where-Is" applies to the sale of Goods and means that the Goods are of the kind, quality, and locale represented, even though they are in a damaged condition. It implies that the buyer takes the entire risk as to the quality of the Goods involved, based upon the buyer's own inspection. Implied and express warranties are excluded in sales of Goods "As-Is, Where-Is."

(13) "Authorized Agency" means those Agencies of the State of Oregon that are subject to the procurement authority of the Director of the Department pursuant to ORS 279A.050 and 279A.140 and with delegated authority pursuant to OAR 125-246-0170. This term includes the

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Department when the Department is engaged in Public Contracting. Nothing in this definition or the use of this term in these Rules conveys any authority to an Agency. An Agency is authorized only through a delegation of authority pursuant to OAR 125-246-0170.

(14) "Award" means, as the context requires, either the act or occurrence of the Agency's identification of the Person with whom the Agency will enter into a Contract following the resolution of any protest of the Agency's selection of that Person, and the completion of all Contract Negotiations.

(15) "Bid" means a response to an Invitation to Bid.

(16) "Bidder" means a Person who submits a Bid in response to an Invitation to Bid.

(17) "Brand Name or Equal Specification" is defined in ORS 279B.200(1) and means a Specification that uses one or more manufacturers' names, makes, catalog numbers or similar identifying characteristics to describe the standard of quality, performance, functionality or other characteristics needed to meet the Agency's requirements and that authorizes Offerors to offer Supplies and Services that are equivalent or superior to those named or described in the Specification.

(18) "Brand Name Specification" is defined in ORS 279B.200(2) and means a Specification limited to one or more products, brand names, makes, manufacturer's names, catalog numbers or similar identifying characteristics.

(19) "Chief Procurement Officer" of the State Procurement Office means the individual designated and authorized by the Director of the Department to perform certain procurement functions described in these Rules.

(20) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services.

(21) "Client" means any individual or family:

(a) For whom an Agency must provide Supplies and Services according to state, federal law, rule, and policy. Those Supplies and Services include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(b) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit; or

(c) Who is under the custody, care, or both of the Agency.

(22) "Client Services" means any Supplies and Services or programs that either directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory services. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(a) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(b) Sustenance, including clothing;

(c) Employment training or Skills training to improve employability;

(d) Services for people with disabilities;

(e) Foster care or foster care facilities;

(f) Residential care or residential care facilities;

(g) Community housing;

(h) In-home care including home delivered meals;

(i) Medical care, services and treatment, including but not limited to:

(A) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy,

Vision;

(B) Alcohol and drug treatment;

(C) Smoking cessation;

(D) Drugs, prescriptions and non-prescription; and

(E) Nursing services and facilities;

(j) Transportation or relocation;

(k) Quality of life, living skills training; or

(l) Personal care; or

(m) Legal services and expert witnesses; and

(n) Religious practices, traditions and services, separately or in any combination thereof. The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(23) "Closing" means the date and time announced in a Solicitation Document as the deadline for submitting Offers.

(24) "Code" or "Public Contracting Code" is defined in ORS 279A.010 and means ORS Chapters 279A, 279B and 279C.

(25) "Competitive Range" means the Proposers with whom the Agency will conduct Discussions or Negotiations if the Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-247-

0261 or 125-249-0650. The size of the Competitive Range must be stated in the Solicitation Document. The size of the Competitive Range will be decreased if the number of Proposers that submit Proposals is less than the specified number and may be increased by the Agency in accordance with OAR 125-247-0261 or 125-249-0650.

(26) "Competitive Sealed Bidding" means the sourcing method pursuant to ORS 279B.055.

(27) "Competitive Sealed Proposals" means the sourcing method pursuant to ORS 279B.060.

(28) "Consultant" means the Person with whom an Agency enters into a Contract for the purposes of consulting, conferring, or deliberating on one or more subjects, and this Person provides advice or opinion; e.g., Consultants for Architectural, Engineering and Land Surveying Services and Related Services as defined in ORS 279C.115 and information technology Consultants.

(29) "Contract" for the purposes of these Rules means "Public Contract."

(30) "Contract Administration" means all functions related to a given Contract between an Agency and a Contractor from the time the Contract is awarded until the Work is completed and accepted or the Contract is terminated, payment has been made, and disputes have been resolved.

(31) "Contractor" means the Person with whom an Agency enters into a Contract and is interchangeable with "Consultant" and "Provider."

(32) "Contract Price" means, as the context requires, (i) the maximum payments that an Agency will make under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract, (ii) the maximum not-to-exceed amount of payments specified in the Contract, or (iii) the unit prices for Supplies and Services set forth in the Contract.

(33) "Contract Review Authority" means the Director of the Department and the Director's delegatee, unless specified by statute as the Director of the Oregon Department of Transportation.

(34) "Contract-Specific Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(35) "Contracting Agency" is defined in ORS 279A.010(1)(b) and for purposes of these Rules, "Contracting Agency" means the Department pursuant to ORS 279A.140, except where otherwise indicated within the Rules.

(36) "Cooperative Procurement" is defined in ORS 279A.200 and means a Procurement conducted by the State Procurement Office or an Authorized Agency on behalf of one or more Agencies. "Cooperative Procurement" includes but is not limited to multiparty contracts and Price Agreements.

(37) "Cooperative Procurement Group" means a group of Authorized Contracting Agencies or other governmental body, domestic or foreign, approved by the State Procurement Office, joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements pursuant to ORS 279A.200.

(38) "Days" means calendar days.

(39) "DBE Disqualification" means a disqualification, suspension or debarment pursuant to ORS 200.065, 200.075, and 279A.110 and OAR 125-246-0210.

(40) "Department" means the Oregon Department of Administrative Services.

(41) "Department Price Agreement" means a Price Agreement issued by the Department's State Procurement Office on behalf of all Agencies subject to the Department's Procurement authority. Such Agreements may be mandatory for use by Agencies or voluntary for use by Agencies. Such Agreements may result from a Cooperative Procurement. See e.g., OAR 125-246-0360 (Purchases through Federal Programs).

(42) "Designated Procurement Officer" means the individual designated and authorized by the head of an Authorized Agency to perform certain Procurement functions described in these Rules. If any head of an Authorized Agency does not designate and authorize an individual as a Designated Procurement Officer, "Designated Procurement Officer" also means that head of the Authorized Agency, who then acts in the place of the Designated Procurement Officer.

(43) "Descriptive Literature" means the Offeror's materials submitted to provide information concerning the Supplies and Services available in response to a Solicitation.

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(44) "Director " is defined in ORS 279A.010(e) and means the Director of the Department or a person designated by the Director to carry out the authority of the Director under the Public Contracting Code and these Rules.

(45) "Discussions" means to exchange information, compare views, take counsel, and communicate with another for the purposes of achieving clarification and mutual understanding of an Offer. This typically occurs before the issuance of a Notice of Intent to award, or in the absence of such Notice, during the Procurement Process and prior to award.

(46) "Donee" is defined in ORS 279A.250 and means an entity eligible to acquire federal donation property based upon federal regulations or eligible to acquire Surplus Property in accordance with rules adopted by the Department. Entities eligible to acquire federal donation property may also acquire Surplus Property other than federal donation property.

(47) "Electronic Advertisement" means notice of an Agency's request for Offers or request for Quotes, request for information or other document inviting participation in the Agency's Procurements available over the Internet via:

(a) The World Wide Web;

(b) ORPIN; or

(c) An Electronic Procurement System other than ORPIN approved by the State Procurement Office. An Electronic Advertisement may or may not include a Solicitation Document.

(48) "Electronic Offer" means a response to an Agency's request for Offers, or request for quotes submitted to an Agency via e-mail or through ORPIN.

(49) "Electronic Procurement System" means ORPIN or other system approved by the State Procurement Office, constituting an information system that Persons may access through the Internet, using HTTP (i.e., the World Wide Web), Telnet or some other Internet protocol, or that Persons may otherwise remotely access using a computer. An Electronic Procurement System enables an Agency to post Electronic Advertisements, receive Electronic Offers, and conduct any activities related to a Procurement.

(50) "Electronic Goods" means Goods which are dependent on electric currents or electromagnetic fields in order to Work properly and Goods for the generation, transfer and measurement of such currents and fields.

(51) "Emergency" means circumstances that:

(a) Could not have been reasonably foreseen;

(b) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and

(c) Require prompt execution of a Contract to remedy the condition.

An "Emergency Procurement" means a sourcing method pursuant to ORS 279B.080, 279C.335(5), 125-248-0200, or related Rules.

(52) "Energy Savings Performance Contract" means a Public Contract between an Agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.

(53) "Engineer" is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002 (2).

(54) "Established Catalog Price" is defined in ORS 279C.100 and means the price included in a catalog, price list, schedule or other form that:

(a) Is regularly maintained by a manufacturer or Contractor;

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or to buyers constituting the general market, including public bodies, for the Supplies and Services involved.

(55) "Executive Department" is defined in ORS 174.112 and subject to ORS 174.108, means: all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the Executive Department of government as described in section 1, Article III of the Oregon Constitution, and that are not:

(a) In the judicial department or the legislative department;

(b) Local governments; or

(c) Special government bodies.

(d) An entity created by statute for the purpose of giving advice only to the Executive Department and that does not have members who are officers or employees of the judicial department or Legislative Department;

(A) An entity created by the Executive Department for the purpose of giving advice to the Executive Department, if the document creating the entity indicates that the entity is a public body; and

(B) Any entity created by the Executive Department other than an entity described in Subsection (c), unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Executive Department.

(56) "Findings" is defined in ORS 279C.330 and means the justification for an Agency's conclusion that includes, but is not limited to, information regarding:

(a) Operational, budget and financial data;

(b) Public benefits;

(c) Value engineering;

(d) Specialized expertise required;

(e) Public safety;

(f) Market conditions;

(g) Technical complexity; and

(h) Funding sources.

(57) "Fire Protection Equipment" is defined in ORS 279A.190 and 476.005 and means any apparatus, machinery or appliance intended for use by a fire service unit in fire prevention or suppression activities, excepting forest fire protection equipment.

(58) "Flagger" is defined in ORS 279C.810 and means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals.

(59) "Fringe Benefits" is defined in ORS 279C.800 and means the amount of:

(a) The rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person under a plan, fund or program; and

(b) The rate of costs to the Contractor or subcontractor that may be reasonably anticipated in providing benefits to Workers pursuant to an enforceable commitment to carry out a financially responsible plan or program that is committed in Writing to the Workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only when the Contractor or subcontractor is not required by other federal, state or local law to provide any of these benefits.

(60) "Good Cause" is defined in ORS 279C.585, and the Oregon Construction Contractors Board must define "Good Cause" by rule. "Good Cause" includes, but is not limited to, the financial instability of a subcontractor. The definition of "Good Cause" must reflect the least-cost policy for Public Improvements established in ORS 279C.305.

(61) "Good Faith Dispute" is defined in ORS 279C.580 and means a documented dispute concerning:

(a) Unsatisfactory job progress;

(b) Defective Work not remedied;

(c) Third-party claims filed or reasonable evidence that claims will be filed;

(d) Failure to make timely payments for labor, equipment and materials;

(e) Damage to the prime Contractor or subcontractor; or

(f) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(62) "Goods" is defined in ORS 279B.005(b) and means supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that an Agency is authorized by law to procure.

(63) "Goods and Services" or "Goods or Services" is defined in ORS 279B.005 and for purposes of these Rules falls within the meaning of "Supplies and Services."

(64) "Grant" is defined in ORS 279A.010(i) and means:

(a) An agreement under which an Agency receives money, property or other assistance, including but not limited to federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

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(b) An agreement under which an Agency provides money, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

(c) "Grant" does not include a Public Contract:

(A) For a Public Improvement for Public Works, as defined in ORS 279C.800; or

(B) For emergency Work, minor alterations or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract:

(i) An Agency pays moneys that the Agency has received under a Grant; and

(ii) Such payment is made in consideration for Contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the Agency.

(65) "Industrial Oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-Working oil or refrigeration oil.

(66) "Intermediate Procurement" means a sourcing method pursuant to ORS 279B.070 or OAR 125-249-0160.

(67) "Interstate Cooperative Procurement" is defined in ORS 279A.200 and means a Permissive Cooperative Procurement in which the Administering Authorized Agency is a governmental body, domestic or foreign, approved by the State Procurement Office, that is authorized under the governmental body's laws, rules or regulations to enter into Public Contracts and in which one or more of the participating Authorized Agencies are located outside of their state.

(68) "Invitation to Bid" or "ITB" is defined in ORS 279B.005 and 279C.400 and means all documents, whether attached or incorporated by reference, and any Addenda thereto, used for soliciting Bids in accordance with either ORS 279B.055 or 279C.335.

(69) "Joint Cooperative Procurement" is defined in ORS 279A.200 and means a Cooperative Procurement that identifies:

(a) The participating Authorized Agencies or the Cooperative Procurement group;

(b) The contract requirements or estimated contract requirements.

(70) "Judicial Department" is defined in ORS 174.113 and means:

(a) The Supreme Court, the Court of Appeals, the Oregon Tax Court, the circuit courts and all administrative divisions of those courts, whether denominated as boards, commissions, committees or departments or by any other designation.

(b) An entity created by statute for the purpose of giving advice only to the Judicial Department and that does not have members who are officers or employees of the Executive Department or Legislative Department;

(c.) An entity created by the Judicial Department for the purpose of giving advice to the judicial department, if the document creating the entity indicates that the entity is a public body; and

(d) Any entity created by the Judicial Department other than an entity described in paragraph (c) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Judicial Department.

(71) "Labor Dispute" is defined in ORS 662.010 and means any controversy concerning terms or conditions of employment, or concerning the association or representation of Persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(72) "Land Surveyor" is defined in ORS 279C.100. and means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(4).

(73) "Legally Flawed" is defined in ORS 279B.405 and means that a Solicitation Document contains terms or conditions that are contrary to law.

(74) "Legislative Department" is defined in ORS 174.114 and, subject to ORS 174.108, means:

(a) The Legislative Assembly, the committees of the Legislative Assembly and all administrative divisions of the Legislative Assembly and its committees, whether denominated as boards, commissions or departments or by any other designation.

(b) An entity created by statute for the purpose of giving advice only to the Legislative Department and that does not have members who are officers or employees of the executive department or judicial department;

(c) An entity created by the Legislative Department for the purpose of giving advice to the legislative department, but that is not created by statute, if the document creating the entity indicates that the entity is a public body; and

(d) Any entity created by the Legislative Department by a document other than a statute and that is not an entity described in paragraph (c) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Legislative Department.

(75) "Locality" is defined in ORS 279C.800 and means the following district in which the Public Works, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

(c) District 3, composed of Marion, Polk and Yamhill Counties;

(d) District 4, composed of Benton, Lincoln and Linn Counties;

(e) District 5, composed of Lane County;

(f) District 6, composed of Douglas County;

(g) District 7, composed of Coos and Curry Counties;

(h) District 8, composed of Jackson and Josephine Counties;

(i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(l) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(76) "Lowest Responsible Bidder" is defined in ORS 279A.010(p) and means the lowest Bidder who:

(a) Has substantially complied with all prescribed Public Contracting procedures and requirements;

(b) Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375;

(c) Has not been debarred or disqualified by the Agency under ORS 279B.130 or 279C.440; and

(d) Is not on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised contract is a Public Improvement Contract.

(77) "Lubricating Oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

(78) "Mandatory Use Contract" means a Public Contract, Department Price Agreement, or other agreement that an Agency is required to use for the Procurement of Supplies and Services.

(79) "Multiple-tiered" or "Multisteped" means the type of process used in Competitive Sealed Bidding and Competitive Sealed Proposals pursuant to ORS 279B and OAR division 247, where the process is staged in phases. For example, a multisteped proposal process includes more than one opportunity to submit proposals for the same project.

(80) "Negotiations" means to compare views, take counsel, and communicate with another so as to arrive at a voluntary, mutual agreement about a matter. Pursuant to ORS 279B and OAR division 247 Negotiations typically occur after issuance of a Notice of Intent to award, or in the absence of such Notice, preceding an award of a Contract.

(81) "Nonprofit Organization" is defined in ORS 279C.810 and means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(82) "Nonresident Bidder" is defined in ORS 279A.120 and means a Bidder who is not a resident Bidder.

(83) "Not-for-Profit Organization" is defined in ORS 307.130 and means a Nonprofit Corporation.

(84) "OAR" means the Oregon Administrative Rules.

(85) "Offer" means collectively or in the alternative: a Bid, Proposal, Quote or similar response to a Solicitation.

(86) "Offeror" means collectively or in the alternative: a Bidder or Proposer.

(87) "Offering" means collectively or in the alternative: the Bid or Proposal.

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(88) "Office of Minority, Women, and Emerging Small Business" or "OMWESB" is defined in ORS 200.025 and 200.055 and means the office that administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise/Women Business Enterprise (MBE/WBE), and Emerging Small Business (ESB) Programs. OMWESB is the sole authority providing certification in Oregon for disadvantaged, minority, and woman-owned businesses, and emerging small businesses.

(89) "OPB Certified Professional" means an individual holding an active Oregon Procurement Basic Certification, issued by the State Procurement Office.

(90) "Opening" means the date, time and place announced in the Solicitation Document for the public opening of Written sealed Offers.

(91) "Original Contract" means the initial Contract or Price Agreement as solicited and awarded by the State Procurement Office or an Authorized Agency. See OAR 125-246-0400(3)(h) for the definition of "Original Contract" applied to Cooperative Procurements only.

(92) "ORPIN" means the on-line electronic Oregon Procurement Information Network administered by the State Procurement Office, as further defined in OAR 125-246-0500.

(93) "ORS" means the Oregon Revised Statutes.

(94) "Participating Authorized Agency" or "Purchasing Authorized Agency" means an Authorized Agency that procures Supplies and Services or Public Improvements from a Provider based on the Original Contract established by an Administering Authorized Agency in a Cooperative Procurement.

(95) "Permissive Cooperative Procurement" is defined in ORS 279A.200 and means a Cooperative Procurement in which the Participating Authorized Agencies are not identified.

(96) "Person" means an individual, organization, or representative of an organization. "Person" is also defined in ORS 279C.500 and 279C.815 and means any employer, labor organization or any official representative of an employee or employer association.

(97) "Personal Services" means the services or type of services performed under a Personal Services Contract. "Personal Services" is also defined in the Public Contracting Code in ORS 279C.100, and that definition in ORS 279C.100 is applicable only to Architect, Engineer, Land Surveyor or Provider of Related Services.

(98) "Personal Services Contract" or "Contract for Personal Services" means a Contract, or a member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services as defined in ORS 279C.100, which primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, broadcaster, artist (including a photographer, filmmaker, painter, weaver or sculptor), or Consultant. Contracts for Architectural, Engineering and Land Surveying Services and Related Services are a special class of Personal Services Contracts, defined in ORS 279C.100(5), and Providers under such Contracts are Consultants, as defined in OAR 125-248-0110(1).

(99) "Prevailing Rate of Wage" is defined in ORS 279C.800 and means the rate of hourly wage, including all fringe benefits, paid in the Locality to the majority of Workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

(100) "Price Agreement" means a Public Contract for the Procurement of Supplies and Services at a set price with:

(a) No guarantee of a minimum or maximum purchase; or

(b) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Supplies and Services in which the Authorized Agency does not guarantee a minimum or maximum additional purchase.

(101) "Procurement" means the act of purchasing, leasing, renting or otherwise acquiring: Supplies and Services; Architectural, Engineering, and Land Surveying Services and Related Services; and Public Improvements. Procurement includes each function and procedure undertaken or required to be undertaken by an Authorized Agency to enter into a Public Contract, administer a Public Contract and obtain the performance of a Public Contract under the Public Contracting Code and these Rules. "Procurement Process" means the process related to these acts, functions, and procedures of Procurement.

(102) "Procurement Document" collectively means the inclusive Solicitation Document and all documents either attached or incorporated by reference, and any changes thereto, used for any of the methods pursuant to

ORS 279A.200 through 279A.220, 279B.055 through 279B.085, 279C.100 through 279C.125, or 279C.300 through 2729C.450.

(103) "Product Sample" means a representative specimen of the item offered by the Offeror in response to the Solicitation Document. Unless otherwise provided in the Solicitation Document, the Product Sample must be the exact product or a representative portion of that product offered by the Offeror.

(104) "Property" is defined in ORS 279A.250 and means personal property.

(105) "Proposal" means a response to a Request for Proposals.

(106) "Proposer" means a Person who submits a proposal in response to a Request for Proposals, except for Architectural, Engineering and Land Surveying Services and Related Services pursuant to OAR 125-248-0110(4), whereby "Proposer" means a Consultant who submits a proposal to an Authorized Agency in response to a Request for Proposals.

(107) "Provider" means collectively or in the alternative: the supplier, Contractor or Consultant, providing Supplies and Services or Public Improvements.

(108) "Post-consumer Waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include manufacturing waste.

(109) "Public Agency" is defined in ORS 279C.800 and means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(110) "Public Body," is defined in ORS 174.109, subject to ORS 174.108, and means state government bodies, local government bodies and special government bodies.

(111) "Public Contract" is defined in ORS 279A.010(x) and means a sale or other disposal, or a purchase, lease, rental or other acquisition, by an Authorized Agency of Supplies and Services, Public Improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Public Contract" does not include Grants.

(112) "Public Contracting" is defined in ORS 279A.010(y) and means Procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering Public Contracts or Price Agreements.

(113) "Public Contracting Code" or "Code" is defined in ORS 279A.010(z) and means 279A, 279B and 279C.

(114) "Public Improvement Contract" means a Public Contract for a Public Improvement. "Public Improvement Contract" does not include a Public Contract for emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(115) "Public Improvement" is defined in ORS 279A.010(aa) and means a project for construction, reconstruction or major renovation on real property by or for an Authorized Agency. "Public Improvement" does not include:

(a) Projects for which no funds of an Authorized Agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(116) "Public Works" is defined in ORS 279C.800 and includes, but is not limited to: roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for, by any public agency, to serve the public interest, but does not include the reconstruction or renovation of privately owned property that is leased by a Public Agency.

(117) "Purchase Order" means an Authorized Agency's document to formalize a purchase transaction with a Provider. Acceptance of a Purchase Order constitutes a Public Contract. An Authorized Agency's use of a Purchase Order must comply with the Public Contracting Code and these Rules.

(118) "Purchasing Authorized Agency" means an Authorized Agency that procures Supplies and Services or Public Improvements from a Provider based on the Original Contract established by an Administering Agency in a Cooperative Procurement.

(119) "QBS" means the qualifications based selection process mandated by ORS 279C.110 for Architectural, Engineering and Land Surveying Services and Related Services Contracts.

(120) "Quote" means a verbal or Written Offer obtained through an Intermediate Procurement.

(121) "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the

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material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(122) "Recycled Oil" means used oil that has been prepared for reuse as a petroleum product by refining, re-refining, reclaiming, reprocessing or other means, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(123) "Recycled Paper" means a paper product with not less than:

(a) Fifty percent of its fiber weight consisting of secondary waste materials; or

(b) Twenty-five percent of its fiber weight consisting of post-consumer waste.

(124) "Recycled PETE" means post-consumer polyethylene terephthalate material.

(125) "Recycled Product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. "Recycled Product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(126) "Related Services" is defined in ORS 279C.100(6) and means personal services, other than architectural, engineering and land surveying services, that are related to the planning, design, engineering or oversight of Public Improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services.

(127) "Request for Proposals" or "RFP" is defined in ORS 279B.005 and means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals in accordance with either ORS 279B.060 or 279C.405 and related rules.

(128) "Request for Qualifications" or "(RFQ)" means a Written document describing the Authorized Agency's circumstances and the type of service(s) desired; setting forth all significant evaluation factors and their relative importance and, if appropriate, price; and soliciting competitive Written qualifications. The RFQ will not result in a Contract, but is intended to establish an open, inclusive list of qualified Contractors from which to seek Proposals and select a Contractor in accordance with OAR 125-247-0550. See the definition for a Request for Qualifications pursuant to OAR 125-248-0110(5), applicable only to Architectural, Engineering and Land Surveying Services and Related Services Contracts.

(129) "Resident bidder" is defined in ORS 279A.120 and means a Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this State, and has stated in the Bid whether the Bidder is a "resident Bidder".

(130) "Responsible Bidder" or "Responsible Proposer" is defined in ORS 279A.105 and 279B.005 and means a person who meets the standards of responsibility as described in ORS 279B.110.

(131) "Responsible Offeror", (also "Responsible Bidder" or "Responsible Proposer" as applicable) means a Person who has submitted an Offer and met the standards set forth in OAR 125-247-0500 or 125-249-0390(2), and who has not been debarred or disqualified by the Agency under OAR 125-247-0575 or 125-249-0370, respectively. When used alone, "Responsible" means meeting the aforementioned standards.

(132) "Responsible Proposer" or "Responsible Bidder" is defined in ORS 279B.005 and means a Person who meets the standards of responsibility described in ORS 279B.110.

(133) "Responsive Bid" or "Responsive Proposal" is defined in ORS 279B.005 and means a Bid or Proposal that substantially complies with the Invitation to Bid or Request for Proposals, respectively, and all prescribed Procurement procedures and requirements.

(134) "Responsive Offer" (also, "Responsive Bid" or "Responsive Proposal," as applicable) means an Offer that substantially complies in all material respects with applicable Solicitation procedures and requirements and the Solicitation Document. When used alone, "Responsive" means having the characteristic of substantially complying in all material respects

with applicable Solicitation procedure and requirements and the Solicitation Document.

(135) "Responsive Proposal" or "Responsive Bid" is defined in ORS 279B.005 and means a bid or proposal that substantially complies with the Invitation to Bid or Request for Proposals and all prescribed procurement procedures and requirements.

(136) "Retainage" is defined in ORS 279C.550 and means the difference between the amount earned by a Contractor on a Public Contract and the amount paid on the contract by the Authorized Agency.

(137) "Rules" mean these Public Contracting Rules of the Department including Divisions 246 through 249, unless otherwise indicated.

(138) "Scope" means the range and attributes of the Supplies and Services; Public Improvements; or Architectural, Engineering and Land Surveying Services and Related Services, described in the applicable Procurement Document.

(139) "Secondary Waste Materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary Waste Materials" includes post-consumer waste. "Secondary Waste Materials" does not include excess virgin resources of the manufacturing process. For paper, "Secondary Waste Materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(140) "Signed" or "Signature" means any mark, word or symbol, including electronic signature, attached to or logically associated with a document and executed or adopted by a Person with the intent to be bound.

(141) "Small Procurement" means a sourcing method pursuant to ORS 279B.065.

(142) "Sole-Source Procurement" means a sourcing method pursuant to ORS 279B.075.

(143) "Solicitation" means:

(a) A request by an Authorized Agency for the purpose of soliciting Offers. This request may take the form of an Invitation for Bid, a Request for Proposal, a Request for Quotation, a Request for Qualifications or a similar document; or

(b) The process of notifying prospective Offerors that the Authorized Agency requests such Offers; or

(c) The Solicitation Document itself. A Solicitation and award process uses methods identified in ORS 279A.200 through 279A.220 (Cooperative Procurement); ORS 279B.055 through 085 (seven methods for Supplies and Services); ORS 279C.100 through 279C.125 (Architectural, Engineering and Land Surveying and Related Services); or ORS 279C.300 through 279C.450 (Public Improvements).

(144) "Solicitation Document," means an Invitation to Bid, a Request for Proposals, or a Special Procurement Solicitation, and all other documents, either attached or incorporated by reference, and any changes thereto, issued by an Authorized Agency to establish an Original Contract that forms the basis for an Agency's participation in a Procurement.

(145) "Special Government Body" is defined in ORS 174.117 and means any of the following:

(a) A public corporation created under a statute of this State and specifically designated as a public corporation.

(b) A school district.

(c) A public charter school established under ORS chapter 338.

(d) An education service district.

(e) A community college district or community college service district established under ORS chapter 341.

(f) An intergovernmental body formed by two or more public bodies.

(g) Any entity that is created by statute, ordinance or resolution that is not part of state government or local government.

(h) Any entity that is not otherwise described in this section that is:

(A) Not part of state government or local government;

(B) Created pursuant to authority granted by a statute, ordinance or resolution, but not directly created by that statute, ordinance or resolution; and

(C) Identified as a governmental entity by the statute, ordinance or resolution authorizing the creation of the entity, without regard to the specific terms used by the statute, ordinance or resolution.

(i) Subject to ORS 174.117, "Special Government Body" includes:

(A) An entity created by statute for the purpose of giving advice only to a special government body;

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(B) An entity created by a Special Government Body for the purpose of giving advice to the special government body, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by a Special Government Body described in Subsection (a) of this section, other than an entity described in paragraph (B) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Special Government Body.

(146) "Special Procurement" means a sourcing method pursuant to ORS 279B.085 and a class Special Procurement, a contract-specific Special Procurement or both, unless the context requires otherwise.

(a) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Supplies and Services.

(b) "Contract-specific Special Procurement" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(147) "Specifications" means any description of the physical or functional characteristics, or of the nature of a Supplies and Services or a construction item, including any requirement for inspecting, testing, or preparing a Supplies and Services or a construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed. See ORS 279B.200(3).

(148) "State" means the State of Oregon.

(149) "State Government," subject to ORS 174.108, means the Executive Department, the Judicial Department and the Legislative Department.

(150) "State Procurement Office" means that office of the State Services Division of the Department designated by the Director to carry out the authority of the Department under the Public Contracting Code and these Rules.

(151) "Substantial Completion" is defined in 279C.465 and pursuant to ORS 12.135 and HB 3022 means the date when the Contractee accepts in Writing the Construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such Written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the Contractee.

(152) "Supplies and Services" includes "Supplies or Services," and collectively means Goods, trade services, and personal services, separately or in any combination of these terms thereof as appropriate within the context of the Rule. "Supplies and Services" includes the terms "goods and services," "goods or services," and "personal services" contained in ORS 279A and B. This term does not include Construction Services or Architectural, Engineering and Land Surveying Services and Related Services, governed under ORS 279C.

(153) "Surplus Property" means all personal property, vehicles and titled equipment property received by the Department as surplus from federal government units, state agencies, local governments, and special government bodies for sale to state agencies, political subdivisions of the State, and private not-for-profit organizations or the general public or any combination thereof.

(154) "Sustainability" is defined in ORS 184.421 and means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.

(155) "Threshold" means a specific monetary limitation that distinguishes one Procurement method from another, triggers a requirement, or marks a point of reference or change in Rule. For example, the Thresholds of \$5,000 to \$150,000 distinguish Intermediate Procurements under ORS 279B from other methods.

(156) "Trade Services" means all remaining services that do not meet the definition for Personal Services.

(157) "Unnecessarily Restrictive" is defined in ORS 279B.405 and means that Specifications limit competition arbitrarily, without reasonably promoting the fulfillment of the Procurement needs of an Agency.

(158) "Used Oil" is defined in ORS 459A.555 and means a petroleum-based oil which through use, storage or handling has become unsuitable

for its original purpose due to the presence of impurities or loss of original properties.

(159) "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.

(160) "Work" means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and successful completion of all duties and obligations imposed by the Contract.

(161) "Written" or "Writing" means conventional paper documents, whether hand Written, manuscript or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required or permitted by applicable law, or to the extent permitted by the Solicitation Document or Contract.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279A.200, 279B.005 & 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05

125-246-0120

Policies

(1) These Rules simplify, clarify and modernize Public Contracting pursuant to ORS 279A.015(1).

(2) These Rules provide a foundation for ethical and fair dealing in Public Contracting, designed to instill public confidence pursuant to ORS 279A.015(2).

(3) The promotion of efficient use of resources pursuant to ORS 279A.015(3) includes but is not limited to Sustainability. Pursuant to ORS 184.421, "Sustainability" means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives. ORS 184.421(1) sets forth the goals for the State of Oregon regarding Sustainability and provides that in conducting internal operations, Agencies must, in cooperation with the Department, seek to achieve the following objectives:

(a) State purchases should be made so as to serve the broad, long term financial interests of Oregonians, including ensuring that environmental, economic and societal improvements are made so as to enhance environmental, economic and societal well-being;

(b) Investments in facilities, equipment and durable goods should reflect the highest feasible efficiency and lowest life cycle costs;

(c) Investments and expenditures should help promote improvements in the efficient use of energy, water and resources;

(e) State operations and purchases should help maintain vital and active downtown and main street communities;

(f) State purchases should help support opportunities for economically distressed communities and historically underemployed people;

(i) State operations should be conducted in ways that significantly increase the efficient use of energy, water and resources;

(j) State operations and purchases should reflect the efficient use and reuse of resources and reduction of contaminants released into the environment.

(4) These Rules clearly identify and implement each of the legislatively mandated socioeconomic programs identified pursuant to ORS 279A.015(4).

(5) "Arriving at best value" pursuant to ORS 279A.015(5) means selecting a Provider based on a determination of which Providers' proposals offer the best trade-off between price and performance, in which quality is considered an integral performance factor. The selection may be based on evaluation factors including but not limited to:

(a) The total cost of ownership, including the cost of acquiring, operating, maintaining and supporting Supply and Services, Public Improvements, and Architectural, Engineering and Land Surveying and Related Services, or any combination thereof, over its projected lifetime;

(b) The technical merit of the Proposer's proposal; and

(c) The probability of the Proposer performing the requirements stated in the Solicitation on time, with high quality and in a manner that accomplishes the stated business objectives.

(6) Authorized Agencies must conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Rules.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.015

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05

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125-246-0170

Delegation of Authority

(1) Policy. Pursuant to ORS 279A.140, the Director of the Department represents the Authorized Agencies in Procurement and is ultimately responsible for the Procurement of the Authorized Agencies. These Rules express this authority, clarifying responsibilities, instilling public confidence, promoting efficient use of resources, implementing the Code and socioeconomic programs, allowing meaningful competition, and providing a structure that supports evolving procurement methods, all pursuant to the policy of ORS 279A.015. The expenditure of public funds and other Public Contracting impacting State assets require individual representation of the State's interests. The Director and delegates may delegate or revoke authority by any of the following forms:

(a) A Written policy issued by the Department;

(b) An Interagency Agreement, signed by the Chief Procurement Officer and the Authorized Agency; or

(c) By this Rule. All delegations pursuant to this Rule, either to any Authorized Agency or the State Procurement Office, may be changed by policy or letter issued from the Director or the Director's delegatee.

(2) Delegation to Authorized Agency Heads and Designated Procurement Officers. Pursuant to ORS 279A.075, the Director of the Department may delegate and subdelegate the Director's authority under ORS 279A.050 in whole or in part. By and subject to this Rule, the Director delegates authority to the heads of Authorized Agencies on the condition that the heads of Authorized Agencies subdelegate such authority to the Agencies' Designated Procurement Officers, who may further subdelegate such authority in accordance with policies of the Agencies (chain of delegation). Each individual in the chain of delegation remains responsible for the exercise of authority by the subdelegatees, and subdelegation does not waive this responsibility. Each delegator must determine and document that the delegatee is capable and accountable for the Procurement. The Designated Procurement Officer, appointed within each Authorized Agency, will be responsible for all procurement activity under delegated authority for the Authorized Agency.

(3) Delegation to the State Procurement Office. The Director of the Department delegates to the Chief Procurement Officer of the State Procurement Office of the Department the rights, powers and authority invested in the Director to:

(a) Delegate and subdelegate these authorities in whole or in part pursuant to ORS 279A.075;

(b) Approve Special Procurement requests, pursuant to ORS 279B.085 and related Rules;

(c) Approve and issue exemption orders, pursuant to ORS 279C.335 and related Rules;

(d) Create all procedures and Specifications required by the Public Contracting Code and these Rules;

(e) Receive, maintain, and act upon information contained in reports, required by the Public Contracting Code and these Rules;

(f) Receive, hear, and resolve protests pursuant to ORS 279B.400 to 270B.420;

(g) Review and hear prequalifications, debarments, and DBE Disqualifications pursuant to ORS 279B.425, 200.065(5), 200.075(1) and 279A.110;

(h) Approve Unanticipated Amendments pursuant to OAR 125-246-0560(2);

(i) Approve expedited notices for Sole-Source Procurements pursuant to OAR 125-247-0275;

(j) Procure and administer Cooperative Procurements and receive, hear, and resolve related protests and disputes, pursuant to ORS 279A.200 through 279A.225 and OAR 125-246-0400 through 125-246-0470;

(k) Approve Brand Name Specifications pursuant to OAR 125-247-0288(3);

(l) Determine authorization for purchases through federal programs pursuant to ORS 279A.180 and OAR 125-246-0360; and

(m) Other actions of the State Procurement Office specifically required by these Rules.

(4) Duties and Responsibilities of the State Procurement Office. The duties and responsibilities of the State Procurement Office are as follows:

(a) Conduct Procurements, including administration of Contracts, for Agencies.

(b) Develop and maintain State-wide Procurement rules, policies, procedures and standard contract terms and conditions as necessary to carry out the Public Contracting Code.

(c) Subdelegate authority in whole or part, based upon consideration and documentation of the following factors in making this decision:

(A) The procurement expertise, specialized knowledge and past experience of the individual;

(B) The impact of the subdelegation of the Procurement on efficiency and effectiveness;

(C) The individual's adherence to the Code, these Rules, standards, procedures and manuals; and

(D) The ability and assent of the individual to be accountable for the delegated Procurement;

(d) Revoke authority delegated by the State Procurement Office in whole or part, based upon consideration and documentation of the following factors in making this decision:

(A) The procurement expertise, specialized knowledge and past experience of the individual;

(B) The impact of the subdelegation of the Procurement on efficiency and effectiveness;

(C) The individual's adherence to the Code, these Rules, standards, procedures and manuals; and

(D) The ability and assent of the individual to be accountable for the delegated Procurement;

(e) Maintain a file of Written subdelegation authority granted and revoked under these Rules in accordance with the law;

(f) Provide guidance and leadership on Procurement matters to Agencies and their employees;

(g) Provide training and instruction opportunities to assure SPO staff and Agency staff are equipped with necessary knowledge and skills to comply with requirements of the Public Contracting Code, Rules, and Department policy;

(h) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, delegations, Special Procurements and exemptions. Report these matters to the Authorized Agency and Director as appropriate. Monitoring Contract development, awards, and compliance applies to all delegations and subdelegations;

(i) Based upon monitoring described in Subsection (4)(h), determine opportunities, establish targets, and utilize methods pursuant to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.

(j) Appoint procurement advisory committees to assist with Specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition pursuant to ORS 279A.015.

(5) Duties and Responsibilities of Designated Procurement Officers and Delegates. Pursuant to Section (1) of this Rule, every Authorized Agency must appoint a Designated Procurement Officer to serve that Authorized Agency. If none is appointed, the agency head assumes the authority, duties and responsibilities of the Designated Procurement Officer. Unless otherwise provided in this Rule or by the head of the respective Authorized Agency, the authority, duties and responsibilities of the Designated Procurement Officer are as follows:

(a) Serve as the exclusive supervisor and manager of the Authorized Agency's Procurement system;

(b) Conduct, supervise and manage Procurement for the Authorized Agency in accordance with the Code and these Rules, except for those Procurements conducted by a delegatee to whom the Designated Procurement Officer has delegated procurement authority;

(c) Prepare or monitor the use of Specifications for all Procurements of the Authorized Agency;

(d) Issue Solicitations and implement other non-Solicitation methods, only as authorized pursuant to this Rule, for all Procurements of the Authorized Agency;

(e) Award and execute Contracts only as authorized pursuant to this Rule;

(f) Comply with the reporting requirements of the Code, these Rules, and Department policies.

(g) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, delegations, Special Procurements and exemptions. Monitoring Contract development, awards, and compliance applies to all delegations and subdelegations;

(h) Based upon the monitoring described in Subsection (5)(g), determine opportunities, establish targets, and utilize methods pursuant to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.

(6) Delegation by Rule Based Upon Thresholds.

(a) Delegation to Authorized Agencies. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies

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for the following Procurements, including Contract Administration. This delegation requires the heads of the Authorized Agencies to subdelegate authority for the following Procurements to the Designated Procurement Officers of the respective Authorized Agencies:

(A) Small Procurements of Supplies and Services up to and including the Threshold of \$5,000, pursuant to ORS 279B.065 and related Rules;

(B) Direct appointments of Architectural, Engineering and Land Surveying Services and Related Services pursuant to OAR 125-248-0200;

(C) Intermediate Procurements of Supplies and Services greater than \$5,000 and not exceeding \$150,000, pursuant to ORS 279B.070 and OAR 125-247-0270, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department.

(D) Informal Selection procedures of Architectural, Engineering and Land Surveying Services and Related Services pursuant to ORS 279C.110 and OAR 125-248-0210, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department.

(E) Intermediate Procurements of Public Improvements estimated not to exceed \$100,000, or not to exceed \$50,000 in the case of Contracts for highways, bridges and other transportation projects, pursuant to OAR 125-249-0160, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department.

(b) Delegation to State Procurement Office. By this Rule, and except as otherwise provided by the policy of the Department, the Director of the Department delegates authority to the State Procurement Office for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services on behalf of Agencies and pursuant to ORS 279B.065;

(B) Intermediate Procurements of Supplies and Services greater than \$5,000 and not exceeding \$150,000, on behalf of Agencies and pursuant to ORS 279B.070 and OAR 125-247-0270;

(C) Informal Selection procedures of Architectural, Engineering and Land Surveying Services and Related Services, on behalf of Agencies and pursuant to ORS 279C.110 and OAR 125-248-0210;

(D) Competitive Quotes of Public Improvements estimated not to exceed \$100,000, or not to exceed \$50,000 in the case of Contracts for highways, bridges and other transportation projects, pursuant to ORS 279C.410 notes and OAR 125-249-0160 (E) All Procurements exceeding the Thresholds for Intermediate Procurements, Informal Procurements, or Competitive Quotes, pursuant to ORS 279B.070 and OAR-125-247-0270 (Supplies and Services); ORS 279C.110 and OAR 125-248-0210 (Architectural, Engineering and Land Surveying and Related Services); and ORS 279C.410 notes and OAR 125-249-0210 (Public Improvements), respectively; and

(E) All Procurements otherwise delegated to an Authorized Agency pursuant to this Section (6) if the State Procurement Office, at its own discretion, assumes this delegated authority, based upon its determination that any Authorized Agency refuses or fails to comply with any delegation described in this Section (6).

(7) Delegation by Rule Based Upon Type:

(a) Delegation to Authorized Agencies. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies for the following Procurements, including Contract Administration. This delegation by Rule requires that the heads of the Authorized Agencies subdelegate the authority for such Procurements to the Designated Procurement Officers of the respective Authorized Agencies. If any head of an Authorized Agency does not subdelegate to an individual as a Designated Procurement Officer, then by definition, the nondelegating head of the Authorized Agency acts in the place of the Designated Procurement Officer.

(A) Sole-Source Procurements within the delegated Threshold authority pursuant to this Rule, Section (6) above or pursuant to a delegation agreement with the State Procurement Office, and in accordance with ORS 279B.075 and OAR 125-247-0275;

(B) Emergency Procurements, in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(C) One-time, nonrepetitive Joint Cooperative Procurements in accordance with OAR 125-246-0430, provided that:

(i) No such Procurement results in a Price Agreement;

(ii) Procurements of Supplies and Services do not exceed the Threshold of \$150,000, including all Amendments, pursuant to OAR 125-246-0560 and the Authorized Agency follows the requirements as set forth in the policy of the Department; or

(iii) Procurements of Public Improvements do not to exceed \$100,000, or not to exceed \$50,000 in the case of Contracts for highways, bridges and other transportation projects, including Amendments pursuant

to OAR 125-246-0560, and the Authorized Agency follows the requirements as set forth in the policy of the Department.

(D) Federal program Procurements within delegated Threshold authority pursuant to Section (6) above or to a delegation agreement with the State Procurement Office, and in accordance with ORS 279A.180 and related Rules;

(E) Client Services Special Procurements pursuant to OAR 125-247-0288; and

(F) As otherwise expressly delegated in OAR 125-247-0288, Special Procurements By Rule.

(b) Delegation to State Procurement Office. By this Rule, and except as otherwise provided by the policy of the Department, the Director of the Department delegates authority to the State Procurement Office for the following Procurements, including Contract Administration:

(A) Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and OAR 125-246-0400 through 125-246-0470, except as provided in Section (7)(a)(C) of this Rule; and the State Procurement Office may delegate this authority by agreement to an Authorized Agency, provided this delegation to an Authorized Agency meets the following criteria:

(i) There is no pre-existing Department Price Agreement or Mandatory Use Agreement;

(ii) The proposed Procurement does not negatively impact other Contracts;

(iii) A competitive process was used for the original agreement; and

(iv) The initial Solicitation was or will be advertised in Oregon.

(B) Special Procurements pursuant to ORS 279B.085 and related Rules, except as expressly delegated to the Authorized Agencies pursuant to OAR 125-247,0288;

(C) Sole-Source Procurements in accordance with ORS 279B.075 and OAR 125-247-0275;

(D) Emergency Procurements in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(E) Federal program Procurements in accordance with ORS 279A.180 and OAR 125-246-0360;

(F) All Procurements otherwise delegated to an Authorized Agency pursuant to this Section (7) if the State Procurement Office, at its own discretion, assumes this delegated authority, based upon its determination that any Authorized Agency refuses or fails to comply with any delegation described in this Section (7).

(8) Supplemental Delegations by the State Procurement Office:

(a) Any Authorized Agency may submit a request for delegation to the State Procurement Office for Procurement authority in accordance with the requirements of the Public Contracting Code, this Rule, and the policy of the Department.

(b) The Department will identify in policy the necessary requirements for requesting and obtaining delegated authority pursuant to this Rule.

(c) The State Procurement Office may delegate and revoke its Procurement authority, in whole or in part, to an Authorized Agency, in accordance with this Rule and the policy of the Department. All delegations must be approved in Writing by the Chief Procurement Officer of the State Procurement Office and based upon a determination, considering relevant factors set forth in the policy of the Department. The State Procurement Office may delegate its authority to meet short-term demands upon its staff and resources, arising from unusual circumstances.

(9) Other Requirements:

(a) Authorized Agencies must maintain good contracting procedures in accordance with the Public Contracting Code and related Rules. Delegation of authority does not exempt an individual or an Authorized Agency from the requirements of the Public Contracting Code, related Rules, and policies of the Department. To the extent applicable, an individual or Authorized Agency receiving any delegated authority is responsible for following the Public Contracting Code and related Rules, unless otherwise indicated.

(b) Any delegation of authority pursuant to this Rule may be revoked by the delegator, provided the revocation is in Writing and the delegatee receives reasonable notice of the revocation. The revocation must be based upon a determination, as set forth in the policy of the Department.

(c) The Authorized Agency must maintain copies of letters or agreements granting delegation of authority.

(d) When an Authorized Agency has delegated authority pursuant to this Rule, the Authorized Agency's signature must be deemed both the execution and approval of the Contract.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.075 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05

ADMINISTRATIVE RULES

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 and Old Contracts in Section (10), as those Contracts are defined in OAR 125-246-0100(5).

(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: Extra Work; Additional Work; Work to be done if certain situations are encountered; or 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).

(C) Original Contract. The Original Contract was awarded either:

(i) Pursuant to ORS 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.085, or 279A.200 through 279A.220; or

(ii) For Transitional or Old Contracts only, in accordance with Old Rules, as the Contracts and Old Rules are defined in OAR 125-246-0100(5).

(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 either:

(I) Pursuant to ORS 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.085, or 279A.200 through 279A.220; or

(II) For Transitional or Old Contracts only, in accordance with Old Rules, as the Contracts and Old Rules are defined in OAR 125-246-0100(5).

(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 must be 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.

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(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 overrun 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) Competitive Quotes.

(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 head of the Agency or supervisor of 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

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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:

(a) As permitted by the Price Agreement;

(b) As permitted by any applicable Special Rule for Amendments, Sections (3) through (9); or

(c) 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 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 and Old Contracts.

(a) "Transitional Contracts" and "Old Contracts" are defined in OAR 125-246-0100(5).

(b) An Authorized Agency must have authority to amend the Transitional or Old 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 or Old Contract by complying with one of the following four (4) processes:

(A) New Amendment Process. An Authorized Agency may apply Sections (1) through (9) of this Amendment Rule; or

(B) New Special Procurement Process. An Authorized Agency may amend through the Special Procurement Rules for Supplies and Services, as set forth in OAR 125-247-0285 through 125-247-0287; or

(C) Exclusive Amendment Process. This Process is not available for Personal Services Contracts. An Authorized Agency may amend an Original Contract with a Provider without competitive bidding and 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, subject to the following conditions:

(i) The Original Contract:

(I) Was let by 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

(ii) The Original Contract was let pursuant to a declaration of emergency, in accordance with former ORS 279.015(4)(a) and 279.015(5) and former OAR 125-310-0030; or

(iii) 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 former 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

(iv) The Original Contract was for the renovation or remodeling of a building.

(v) Except for Amendments entered into pursuant to Subsections (C)(i) to (iv), 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)(i) 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)(ii) or (iii) are not subject to either the 20 percent or the 33 percent aggregate limit on Contract Amendments.

(vi) 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 former ORS 279.015(1), must not be subject to the competitive procurement provisions of former ORS 279.005 through 279.111.

(D) Personal Services Amendment Process. This process is for Personal Services Contracts only.

(i) Contract Amendments must be made in writing.

(ii) Amendments to Contracts must fall within the Scope of the original Solicitation, unless the Original Contract was exempt under former OAR 125-020-0610, including whether the Contract consideration or term limit for performance may be increased (See former OAR 125-020-0310(4)(b)). Amendments must not be used to circumvent rules establishing approvals at certain monetary levels.

(iii) 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.

(iv) 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.

(v) 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.

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(vi) The Authorized Agency must provide justification for any increase in time, compensation or other modification to the State Procurement Office.

(vii) 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.

(viii) For Amendments, the Authorized Agency is required to:

(I) Prepare a Contract Amendment;

(II) Obtain necessary approvals before the Amendment is effective; and

(III) Issue the Award justification on ORPIN for Amendments that do not require State Procurement Office approval.

(ix) For Contract Amendments that require 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.

(x) The State Procurement Office will review and approve the Contract Amendment for compliance with applicable rules.

(d) Section (10) 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.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; DAS 7-2005, f. & cert. ef. 6-6-05; DAS 9-2005, f. & cert. ef. 8-3-05

125-246-0575

Retroactive Approvals

(1) Application. For the purposes of this Rule only, "Personal Services" includes Architectural, Engineering and Land Surveying Services and Related Services.

(2) Retroactive Approval of a Contract means the action of the State Procurement Office retroactively approving a Contract that was not previously properly executed containing all the required approval signatures. This Rule applies to Contracts that must have the approval of the State Procurement Office pursuant to ORS 279ABC or these Rules, including but not limited to Personal Services Contracts and Contracts for Architectural, Engineering, and Land Surveying Services and Related Services.

(3) Before the State Procurement Office may consider retroactive approval of a Contract, an Authorized Agency must do all of the following:

(a) Submit to the State Procurement Office a copy of the Contract document to be reviewed and a Written request for contract retroactive approval consideration to be executed by an executive officer, or Designated Procurement Officer of the Authorized Agency who is responsible for oversight of the Contract, that contains:

(A) An explanation of why the Contract was not submitted to the State Procurement Office before performance began;

(B) A description of the steps being taken to prevent similar occurrences in the future; and

(C) A proposed retroactive approval of the Contract.

(b) Obtain all other approvals required for the Public Contract, including the Department of Justice's Legal Sufficiency Ratification of a Public Contract pursuant to OAR 137-045-0090 for Contracts that exceed \$75,000.

(c) Obtain approval from the State Procurement Office.

(4) The Authorized Agency must provide a copy of the retroactively approved Contract and the Authorized Agency's retroactive approval documentation to the Authorized Agency within thirty (30) Days after the Contract is approved or fully executed, whichever is later.

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 9-2005, f. & cert. ef. 8-3-05

125-247-0010

Policies

(1) ORS 279B and this division 247 apply the policies of ORS 279A.015 to the Procurement of Supplies and Services. The seven sourcing methods for procurement, procedures, and legal remedies set forth in ORS 279B and these Rules simplify, clarify and modernize procurement practices so that they reflect the market place and industry standards. ORS 279B and this division 247 provide a Public Contracting structure that can take full advantage of evolving procurement methods as they emerge within various industries, pursuant to ORS 279A.015(6).

(2) Specific procedures accompany each method, followed by a Section of general procedures. Authorized Agencies must comply with both the specific procedures of a method and general procedures.

(3) The responsibility of the Designated Procurement Officer and any delegatee of an Authorized Agency is to choose the appropriate sourcing methods in accordance with the Code, Rules, and policy, and arrive at offers that represent optimal value to the Agency and the State.

(4) Meaningful competition can be achieved through various strategies and sourcing methods when procuring Supplies and Services, and this competition must be reasonably calculated and demonstrated to satisfy the Authorized Agency's and the State's needs.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.010

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05

125-247-0261

Competitive Sealed Proposals; Multistep Solicitations

(1) Generally. An Authorized Agency may procure Supplies and Services employing any combination of the methods of Contractor selection as set forth in ORS 279B.060(6)(b). In addition to the procedures set forth in OAR 125-247-0300 through 125-247-0490 for methods of Contractor selection that call for the establishment of a Competitive Range or include Discussions or Negotiations, an Authorized Agency must employ the procedures set forth in this Rule for:

(a) Competitive Range;

(b) Best and Final Offers;

(c) Multistep Unpriced Proposals; and

(d) Multistep Revised Negotiations. An Authorized Agency may also use a Request for Qualifications pursuant to OAR 125-247-0550 in combination with any of the methods described in ORS 279B.060(6)(b) or this Rule. All of the methods described in ORS 279B.060(6)(b) and this Rule may also be collectively referred to in division 247 as "Multi-tiered Sealed Proposals" or "Multistep Sealed Proposals."

(2) Generally; Protests.

(a) Solicitation Protest. Prior to the initial Closing, an Authorized Agency must provide an opportunity to protest the Solicitation under ORS 279B.405 and OAR 125-247-0730.

(b) Addenda Protest. Pursuant OAR 125-247-0430(4), an Authorized Agency may provide an opportunity in accordance with OAR 125-247-0730 to protest any Addenda issued pursuant to ORS 279B.060(6)(d), but an Authorized Agency is not required to provide this opportunity.

(c) Exclusion Protest. An Authorized Agency may provide before the Notice of Intent to Award an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of Multi-tiered or Multistep Sealed Proposals as set forth in OAR 125-247-0720.

(d) Administrative Remedy. Proposers may submit a protest to any Addenda or to any action by the Authorized Agency that has the effect of excluding the Proposer from subsequent Phases of a multiple-tiered or multistep Request for Proposals to the extent such protests are provided for in the Solicitation Document. Failure to so protest must be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Authorized Agency.

(e) Award Protest. An Authorized Agency must provide an opportunity to protest its Intent to Award a Contract pursuant to ORS 279B.410 and OAR 125-247-0740. An Affected Proposer may protest, for any of the bases set forth in OAR 125-247-0720(2), its exclusion from the Competitive Range or any phase of a Technical Proposal, Multi-tiered Proposal or Multistep Sealed Proposal, or an Addendum issued following initial Closing, if the Authorized Agency did not previously provide Proposers the opportunity to protest such exclusion or Addendum.

(3) Competitive Range. When an Authorized Agency's Solicitation process conducted pursuant to ORS 279B.060(6)(b) calls for the Authorized Agency to establish a Competitive Range at any stage in the Procurement Process, the Authorized Agency must comply with the following procedures:

(a) Determining Competitive Range:

(A) The Authorized Agency must establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Authorized Agency must determine and rank the Proposers in the Competitive Range.

(B) The Authorized Agency may increase the number of Proposers in the Competitive Range if the Authorized Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer. The Authorized Agency may decrease the number of Proposers in the initial Competitive Range only if the excluded

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Proposers have no reasonable chance to be the most Advantageous Proposer.

(b) **Protesting Competitive Range.** The Authorized Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. An Authorized Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Authorized Agency's evaluation and determination of the Competitive Range in accordance with OAR 125-030-0720.

(c) **Intent to Award; Discuss or Negotiate.** After determination of the Competitive Range and after any protest period provided in accordance with Subsection (3)(b) expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to award the Contract to the highest-ranked Proposer in the Competitive Range:

(i) An unsuccessful Proposer may protest the Authorized Agency's intent to award in accordance with OAR 125-247-0740 and ORS 279B.410.

(ii) After the protest period provided in accordance with OAR 125-247-0740 expires, or after the Authorized Agency has provided a final response to any protest, whichever date is later, the Authorized Agency must commence Negotiations in accordance with this Rule with Proposers in the Competitive Range; or

(B) Engage in Discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in this Rule and following such Discussions and receipt and evaluation of revised Proposals, conduct Negotiations as set forth in this Rule with the Proposers in the Competitive Range.

(4) **Discussions and Revised Proposals for Best and Final Offers.** If an Authorized Agency chooses to use the Competitive Range method and then enter into Discussions and receive best and final Offers, the Authorized Agency must proceed as follows:

(a) **Initiating Discussions.** If the Authorized Agency initiates any Discussion, the Authorized Agency must initiate oral or Written Discussions with all Proposers submitting Responsive Proposals or all Proposers in the Competitive Range (collectively "eligible Proposers") regarding their Proposals with respect to the provisions of the RFP that the Authorized Agency identified in the RFP as the subject of Discussions. The Authorized Agency may conduct Discussions for the following purposes:

(A) Informing eligible Proposers of deficiencies in their initial Proposals;

(B) Notifying eligible Proposers of parts of their Proposals for which the Authorized Agency would like additional information; or

(C) Otherwise allowing eligible Proposers to develop revised Proposals that will allow the Authorized Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) **Conducting Discussions.** The Authorized Agency may conduct Discussions with each eligible Proposer necessary to fulfill the purposes of this Section 4, but need not conduct the same amount of Discussions with each eligible Proposer. The Authorized Agency may terminate Discussions with any eligible Proposer at any time. However, the Authorized Agency must offer all eligible Proposers the same opportunity to discuss their Proposals with the Authorized Agency before the Authorized Agency notifies eligible Proposers of the date and time pursuant to Subsection (4)(c) that best and final Proposals will be due.

(A) In conducting Discussions, the Authorized Agency:

(i) Must treat all eligible Proposers fairly and must not favor any eligible Proposer over another;

(ii) Must only disclose other eligible Proposer's Proposals or Discussions in accordance with 279B.060(6)(a)(ii) or (iii);

(iii) May adjust the evaluation of a Proposal as a result of a Discussion under this Section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the Discussions provided the changes are within the scope of the Request for Proposals.

(B) At any time during the time allowed for Discussions, the Authorized Agency may:

(i) Continue Discussions with a particular eligible Proposer;

(ii) Terminate Discussions with a particular eligible Proposer and continue Discussions with other eligible Proposers; or

(iii) Conclude Discussions with all remaining eligible Proposers and provide notice pursuant to this Rule to the eligible Proposers requesting best and final Offers.

(c) **Best and Final Offers.** An Authorized Agency must establish a common date and time by which Proposers must submit best and final Offers. Best and final Offers must be submitted only once; provided, however, the Authorized Agency may make a Written determination that it is in the Authorized Agency's best interest to conduct additional Discussions and Negotiations or change the Authorized Agency's requirements and require another submission of best and final Offers. Otherwise, no Discussion of or changes in the best and final Offers may be allowed prior to award. Proposers must also be informed if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best and final Offer. The Authorized Agency must evaluate Offers as modified by the best and final Offer. The Authorized Agency must conduct evaluations conducted as described in OAR 125-247-0600. The Authorized Agency must not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

(5) **Multistep Proposals:**

(a) **Process.** An Authorized Agency may procure Supplies and Services by using Multistep Proposals pursuant ORS 279.060(6)(b)(G). The Multistep Proposals process is a phased Procurement Process that seeks necessary information or unpriced technical submittals in Phase One and regular Competitive Sealed Proposals, inviting Proposers who submitted technically qualified submittals in Phase One, to submit Competitive Sealed Price Proposals on the technical Proposals in Phase Two. Any Contract must be awarded to the Responsible Proposer, or in the case of multiple awards, the Responsible Proposers pursuant to ORS 279B.060(10), submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to Phase Two. A "Phase" may include one or more "steps" as referenced in the Code. If time is a factor, the Authorized Agency may require Proposers to submit a separate sealed price Proposal during Phase One to be opened after the evaluation of unpriced technical submittals. The Authorized Agency must comply with the following procedures for this type of Solicitation:

(b) **Procedure for Phase One of Multistep Proposals.**

(A) **Public Notice.** Whenever Multistep Proposals are used, the Authorized Agency must provide Public Notice of the Solicitation as set forth in OAR 125-247-0305. Public Notice is not required for any subsequent steps of Phase One, unless a step in Phase One expands the number of Proposers, and then Public Notice is required. Public Notice is not required for Phase Two. However, an Authorized Agency must give notice to all Proposers of subsequent steps in Phase One and Phase Two, inform Proposers of the right to protest Addenda issued after the initial Closing pursuant to OAR 125-247-0430, and further inform Proposers excluded from subsequent Steps or Phase of the right, if any, to protest exclusion pursuant to OAR 125-247-0720. If an Authorized Agency elects to provide a protest period during this Procurement Process for Addenda issued after the initial Closing pursuant to OAR 125-247-0430, then the Authorized Agency must give notice to the Proposers of this right to protest such Addenda.

(B) **The Form of the Request for Proposals.** Multistep Proposals must be initiated by the issuance of a Request for Proposal in the form and manner required for Competitive Sealed Proposals in accordance with OAR 125-247-0260, except as provided in this Rule. In addition to the requirements set forth in OAR 125-247-0260(2), this Request for Proposal must state:

(i) That unpriced technical submittals are requested;

(ii) Whether price Proposals are to be submitted at the same time as unpriced technical submittals; if they are, that such price Proposals must be submitted in a separate sealed envelope;

(iii) That the Solicitation is a Technical Proposal Procurement, and priced Proposals will be considered only in Phase Two and only from those Proposers whose unpriced technical submittals are found acceptable in Phase One;

(iv) The criteria to be used in the evaluation of unpriced technical submittals;

(v) That the Authorized Agency, to the extent that it finds necessary, may conduct oral or Written Discussions for the purposes of clarification of the unpriced technical submittals;

(vi) That the Supplies and Services being procured must be furnished generally in accordance with the Proposer's unpriced technical submittals as found to be finally qualified and must meet the requirements of the Request for Proposals;

(vii) Whether Proposers excluded from subsequent steps or Phase Two have a right to protest the exclusion. Such information must be given in the Solicitation or changed by Addenda; and

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(viii) If time is a factor, the Authorized Agency may require Proposers to submit a separate sealed price Proposal during Phase One to be opened after the evaluation of unpriced technical submittals.

(C) Addenda to the Request for Proposal. After receipt of unpriced technical in Phase One, Addenda to the Request for Proposal must be distributed only to those Proposers who submitted unpriced technical submittals.

(D) Receipt and Handling of Unpriced Technical Proposals. The Authorized Agency is not required to publicly open unpriced technical submittals.

(E) Evaluation of Unpriced Technical Proposals. The unpriced technical submittals submitted by Proposers must be evaluated solely in accordance with the criteria set forth in the Request for Proposals. The unpriced technical submittals must be categorized as:

(i) Qualified;

(ii) Potentially qualified; that is, reasonably susceptible of being made qualified; or

(iii) Unqualified. The Authorized Agency must record in Writing the basis for determining a Proposal unqualified and make it part of the Procurement File in accordance with OAR 125-246-0355. The Authorized Agency may initiate Phase Two of the procedure if, in the Authorized Agency's opinion, there are sufficient qualified unpriced technical submittals to assure effective price competition in Phase Two without technical Discussions. If the Authorized Agency finds that such is not the case, the Authorized Agency may issue an Addendum to the Request for Proposals or engage in Discussions as set forth in this Rule.

(F) Discussion of Unpriced Technical Submittals. The Authorized Agency may seek clarification of any technical Proposal of any Proposer who submits a qualified, or potentially qualified unpriced technical submittal. During the course of such Discussions, the Authorized Agency must not disclose any information derived from one unpriced technical submittal to any other Proposer. Once Discussions begin, any Proposer may submit supplemental information amending the unpriced technical submittal at any time until the Closing of Phase Two set by the Authorized Agency. A submission may be in response to a request of the Authorized Agency or be initiated by the Proposer.

(G) Notice of Unqualified Unpriced Technical Submittals. When the Authorized Agency determines a Proposer's unpriced technical submittal to be unqualified, such Proposer must not be afforded an additional opportunity to supplement its unpriced technical submittal.

(H) Mistakes During Multistep Sealed Proposals. Mistakes may be corrected or Proposals may be withdrawn during Phase One:

(i) Before unpriced technical submittals are considered;

(ii) After any Discussions have commenced under this Rule;

(iii) When responding to any Addenda of the Request for Proposals;

or

(I) In accordance with OAR 125-247-0470.

(c) Procedure for Phase Two.

(A) Initiation. Upon the completion of Phase One, the Authorized Agency must either:

(i) Open price Proposals submitted in Step One (if price Proposals were required to be submitted) from Proposers whose unpriced technical submittals were found to be qualified; or

(ii) If price Proposals have not been submitted, Discussions have been held, or Addenda to the Request for Proposals have been issued, invite each qualified Proposer to submit a price Proposal.

(B) Conduct. Phase Two must be conducted as any other Competitive Sealed Proposals Solicitation pursuant to OAR 125-247-0260, except:

(i) As specifically set forth in this Rule; and

(ii) No public notice need be given of the request to submit price Proposals because such notice was previously given.

(6) Multistep Revised Negotiations:

(a) Process. Multistep Negotiations means a process that begins with the standard Solicitation procedures for an RFP and may include successive steps of Proposals achieved through Negotiations to gain the best and final Proposal for purposes of Award. These Negotiations may concern the price, Specifications, and final terms and conditions, separately or in any combination thereof. The Authorized Agency must treat all Proposers fairly. Before the start of each step of Negotiations, the Authorized Agency must disclose the parameters of that step of Negotiations. At that time, the Authorized Agency may revise the Solicitation's Specifications, terms and conditions, evaluation criteria and weight, and pricing structure in order to best meet the State's interests (Revisions). At each successive step, Proposers will have the option of dropping out of the process or continuing with the process. At each successive round, the Authorized Agency may

disregard its scoring of prior Proposals and commence new scoring for the new Proposals. The Authorized Agency may eliminate any Proposal after a step because the Proposal did not meet a minimum score, or the Proposal was not susceptible to award, and then proceed with a second step that requires additional Proposals based on the Revision(s). If any Revision is made by the Authorized Agency in any subsequent step, the Authorized Agency reserves the right, in its sole discretion, to permit any Proposer whose Proposal was previously eliminated to submit a new Proposal, if the reason(s) for the elimination of the prior Proposal by that Proposer no longer applies. For each Solicitation, on a case-by-case basis, the Authorized Agency may determine whether prequalification of suppliers is needed. If prequalification is used, the Authorized Agency must prequalify suppliers and provide an appeal process in accordance with ORS 279B.120 and related rules.

(b) Negotiations. The Authorized Agency may negotiate serially with the highest-ranked eligible Proposers or simultaneously with all eligible Proposers as follows:

(A) After an initial determination of which Proposals are Responsive;

(B) After an initial determination of the Competitive Range in accordance with this Rule; or

(C) After conclusion of Discussions with all eligible Proposers and evaluation of revised Proposals.

(c) Conducting Negotiations.

(d) Scope. The Authorized Agency may negotiate:

(A) The statement of Work;

(B) The Contract Price as it is affected by negotiating the statement of Work; and

(C) Any other terms and conditions reasonably related to those expressly authorized for Negotiation in the Request for Proposals or Addenda thereto. Accordingly, Proposers must not submit, and the Authorized Agency must not accept, for Negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for Negotiation in the Request for Proposals or Addenda thereto.

(d) Terminating Negotiations. At any time during Discussions or Negotiations that the Authorized Agency conducts in accordance with this Rule, the Authorized Agency may terminate Discussions or Negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Authorized Agency reasonably believes that:

(A) The Proposer is not discussing or negotiating in good faith; or

(B) Further Discussions or Negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(e) Continuing Serial Negotiations. If the Authorized Agency is conducting serial Negotiations and the Authorized Agency terminates Negotiations with a Proposer in accordance with this Rule, the Authorized Agency may then commence Negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this Rule until the Authorized Agency has determined either:

(A) To award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Has completed one step of Discussions or Negotiations with all Proposers in the Competitive Range, unless the Authorized Agency provided for more than one round of Discussions or Negotiations in the Request for Proposals.

(f) Competitive Simultaneous Negotiations. If the Authorized Agency chooses to conduct competitive Negotiations, the Authorized Agency may negotiate simultaneously with competing Proposers. The Authorized Agency:

(A) Must treat all Proposers fairly and must not favor any Proposer over another;

(B) Must only disclose other Proposer's Proposals or the substance of Negotiations with other Proposers if the Authorized Agency notifies all of the Proposers with whom the Authorized Agency will engage in Negotiations before engaging in Negotiations with any Proposer; and

(C) Any oral modification of a Proposal resulting from Negotiations under this Section must be reduced to Writing by the Proposer.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.060

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05

125-247-0270

Intermediate Procurements

(1) Generally. For Procurements of Supplies and Services greater than \$5000 and less than or equal to \$150,000, an Authorized Agency may

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award a Contract as an Intermediate Procurement pursuant to ORS 279B.070.

(2) Written Solicitations. For Intermediate Procurements equal to or exceeding \$75,000, an Authorized Agency must use a Written Solicitation to obtain Quotes, Bids or Proposals.

(3) Negotiations. An Authorized Agency may negotiate with a Proposer to clarify its Quote, Bid, or Proposal or to effect modifications that will make the Quote, Bid, or Proposal acceptable or make the Quote, Bid, or Proposal more Advantageous to the Authorized Agency.

(4) Amendments. An Authorized Agency may amend a Contract awarded as an Intermediate Procurement in accordance with OAR 125-246-0560.

(5) No Fragmentation. A Procurement may not be artificially divided or fragmented so as to constitute an Intermediate Procurement, pursuant to ORS 279B.070(2).

(6) Public Notices. Notice and advertising requirements must be in accordance with the Department's Policy. An Authorized Agency must use ORPIN to solicit Quotes.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.070

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05

125-247-0287

Special Procurements; Request Procedures

(1) Approval. An Authorized Agency may request approval from the Chief Procurement Officer of the State Procurement Office to use a Special Procurement for a particular Contract or Contracts or for a specific class of Contracts using the designated State Procurement Office form.

(2) Requests. Special Procurement Requests must contain the following:

(a) Request must include reason(s) why Authorized Agency has elected to use Special Procurement and how it will benefit the Authorized Agency or the public.

(b) The Request must include findings, market research, or other documentation that the Special Procurement:

(A) Will be unlikely to encourage favoritism in the awarding of Public Contracts or to substantially diminish competition for Public Contracts, and

(B) Will either:

(i) Result in substantial cost savings to the Authorized Agency or to the public; or

(ii) Otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any related Rules.

(c) The alternative process designed by the Authorized Agency must be clear and complete, including a description of the Supplies and Services to be acquired, provisions for advertisement, a proposed Solicitation process, including provisions for Amendment and criteria for selection, and the proposed contract document.

(d) The State Procurement Office may require any additional information deemed necessary to evaluate the Authorized Agency's request for approval of a Special Procurement.

(3) Effect. The Special Procurement approval is effective only after the Chief Procurement Officer's approval of the findings and Request.

(4) Public Notice:

(a) The manner in which an Authorized Agency must give public notice of its request for approval and of the Chief Procurement Officer's approval of a Special Procurement must be similar to the manner it gives for public notice of Competitive Sealed Bidding under ORS 279B.055(4) and OAR 125-247-0305. The public notice must describe the Supplies and Services or class of Supplies and Services to be acquired through the Special Procurement. Notwithstanding OAR 125-247-0305 and pursuant to ORS 279B.400, reasonable times and manners for affected persons to protest an Authorized Agency's request for approval of a Special Procurement are as follows:

(A) If the Special Procurement involves one or more Solicitations, then the Authorized Agency must give a combined public notice of its initial Solicitation, its request for approval of a Special Procurement, and the approval of the Special Procurement by the Chief Procurement Officer of the State Procurement Office, at least seven (7) calendar Days before the initial Solicitation's closing date. The Solicitation Document must either contain the attached request and approval of the Special Procurement or incorporate the request and approval by reference with the documents easily accessible to affected Persons; or

(B) If the Special Procurement does not involve a Solicitation, then the Authorized Agency must give a combined public notice of its request

for approval of a Special Procurement and the approval of the Special Procurement by the Chief Procurement Office, at least seven (7) Days prior to the commencement of the Special Procurement.

(b) An Authorized Agency may specify an exception to the public notice requirement of this Rule in cases where confidentiality or security may be jeopardized only pursuant to an exception under the Public Meetings Law (ORS 192.610 through 192.690).

(5) Protest. An Affected Person may protest the approval of or request for approval of a Special Procurement in accordance with ORS 279B.400 and OAR 125-247-0700.

(6) Reference. Any Solicitation or Contract resulting from a Special Procurement approval must reference the Special Procurement approval number in the file.

(7) Conditions. The Chief Procurement Officer's approval may include conditions, such as expiration dates, and may be revoked at any time by the Chief Procurement Officer.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.085

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05

125-249-0160

Competitive Quotes and Amendments

(1) General. Public Improvement Contracts estimated by the Authorized Agency not to exceed \$100,000, or not to exceed \$50,000 in the case of Contracts for highways, bridges and other transportation projects, may be Awarded in accordance with intermediate level procurement procedures for competitive quotes established by this Rule.

(2) Selection Criteria. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, Contractor capacity, responsibility and similar factors.

(3) Request for Quotes. Authorized Agencies must utilize Written requests for quotes whenever reasonably practicable. Written request for quotes must include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the Authorized Agency must state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotations may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

(4) Number of Quotes; Record Required. Authorized Agencies must seek at least three competitive quotes, and keep a Written record of the sources and amounts of the quotes received. If three quotes are not reasonably available the Authorized Agency must make a Written record of the effort made to obtain those quotes.

(5) Award. If awarded, the Authorized Agency must Award the Contract to the prospective Contractor whose quote will best serve the interests of the Authorized Agency, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the Authorized Agency must make a Written record of the basis for Award.

(6) Price Increases. Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award by the Authorized Agency issuance of a Change to the Work or Amendment, pursuant to OAR 125-249-0910, within the following limitations:

(a) 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;

(b) 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 head of the Agency or supervisor of the approves the increase in writing.

(7) Amendments. Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in Section (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.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: Temporary provisions relating to competitive quotes were not codified but compiled as Legislative Counsel notes following ORS 279C.410

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05

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125-249-0310

Electronic Procurement

(1) General. Authorized Agencies may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1), provided that advertisement of such Contracts with an estimated Contract Price in excess of \$125,000 must also be published in a trade newspaper of general statewide circulation, and may post notices of intent to award electronically as provided by ORS 279C.410(7).

(2) Alternative Procedures. In the event that an Authorized Agency desires to allow Electronic Offers for a Public Improvement Contract, it must first promulgate supporting procedures substantially in conformance with OAR 125-247-0330 (Electronic Procurement under ORS chapter 279B), taking into account ORS chapter 279C requirements for Written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.

(3) Interpretation. Nothing in this Rule may be construed as prohibiting Authorized Agencies from making Procurement Documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279C.365

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05

125-249-0910

Changes to the Work and Contract Amendments

(1) Definitions. As used in this Rule:

(a) "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 Agency and the Contractor.

(b) "Changes to the Work" means a mutually agreed upon change order, or a construction change directive or other Written order issued by the 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.

(2) Changes Provisions. Changes to the Work are anticipated in construction and, accordingly, Agencies must include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the 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 Agencies.

(3) Change Order Authority. 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.

(4) Contract Amendments. Contract Amendments reasonably related to 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:

(a) They are within the general Scope of the original Procurement;

(b) 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;

(c) 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

(d) The Amendment is made consistent with applicable legal requirements.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065 & 279C.400(1)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05

Department of Administrative Services, Budget and Management Division Chapter 122

Adm. Order No.: BMD 2-2005(Temp)

Filed with Sec. of State: 7-28-2005

Certified to be Effective: 8-1-05 thru 8-31-05

Notice Publication Date:

Rules Adopted: 122-001-0027

Subject: This rule extends expenditure limits allowing state agencies without a 2005-07 legislatively adopted budget to continue operating after July 31, 2005.

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

122-001-0027

Continuing Resolution for State Agency Expenditure Limitations

(1) A state agency, as defined in Senate Bill 5631 (Oregon Laws 2005), may incur obligations and authorize expenditures to continue operations into the 2005-2007 biennium at:

(a) The agency's 2003-2005 eighth quarter allotment level; or

(b) A higher or lower level as approved by the Budget and Management Division.

(c) In establishing an alternative expenditure level, the Budget and Management Division shall consider pending legislative budget direction.

(2) Each state agency without a legislatively adopted budget as of July 31, 2005, shall send a signed letter of verification to the Budget and Management Division on or before August 1, 2005, acknowledging:

(a) The agency does not have a legislatively adopted budget as of July 31, 2005;

(b) The continuing resolution ends August 31, 2005 or when an adopted budget is signed by the Governor;

(c) Expenditures will not be authorized above the level established pursuant to section (1) of this rule;

(d) Expenditures incurred under the continuing resolution will be part of the 2005-2007 adopted budget and not permanently charged against 2003-2005 expenditure limitation or appropriation; and

(e) The agency will not begin new programs or hire new staff positions until an adopted budget is signed by the Governor.

(3) Upon receipt of the signed verification letter, the Budget and Management Division shall establish an allotment level pursuant to section (1) of this rule. The Budget and Management Division shall notify each agency of the action taken.

Stat. Auth.: ORS 184.340

Stats. Implemented: OL 2005 (Senate Bill 5631)

Hist.: BMD 2-2005(Temp), f. 7-28-05, cert. ef. 8-1-05 thru 8-31-05

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

Adm. Order No.: PEBB 2-2005

Filed with Sec. of State: 7-26-2005

Certified to be Effective: 7-29-05

Notice Publication Date: 7-1-05

Rules Adopted: 101-005-0075, 101-005-0105

Rules Amended: 101-005-0010, 101-005-0020, 101-005-0030, 101-005-0040, 101-005-0050, 101-005-0060, 101-005-0070, 101-005-0080, 101-005-0090, 101-005-0100, 101-005-0110, 101-005-0120, 101-005-0130, 101-005-0140, 101-006-0010, 101-006-0020

Subject: This rulemaking adopts new rules and amends current rules governing the procurement and contracting for vendor services, insurance benefits, and consultants of the Public Employees' Benefit Board (PEBB). Experience in using the rules for PEBB's contracting and procurement processes and changes, and clarification of ORS 279 A and B, dictate the need for revisions and clarifications.

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

101-005-0010

Renewal, Screening and Selection for Benefit, Vendor and Consultant Contracts

The Board is charged with the obligation of obtaining Benefit Plans to provide Benefits to Eligible Employees. OARs 101-005-0040 through 101-005-0140 set forth the screening, selection and renewal process to be

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used for all such Benefit Plan contracts. OAR 101-006-0010 sets forth the screening and selection process to be used for retaining Consultants and other Vendors. The Board has sole authority for procuring all benefits and services contemplated by ORS 243.061 through 243.302.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.125

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-005-0020

Policy

The policy of the Board is to select Contractors in an expeditious and efficient manner that is consistent with the goal of delivering high quality Benefits and other services at a cost that is affordable to both the employees and the state, consistent with the requirements of ORS 242.135. The Board may enter into more than one contract for each type of Benefit Plan or other service sought.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.125 & 243.135(2)

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-005-0030

Definitions

For the purposes of OARs 101-005-0010 through 101-006-0020 the following terms have the meanings indicated below.

(1) "Benefit Plan" includes, but is not limited to:

(a) Contracts for insurance or other benefit based on life; supplemental medical, supplemental dental, optical, accidental death or disability insurance; group medical, surgical, hospital, flexible spending account, or any other remedial care recognized by state law; and related services and supplies. "Benefit plan" includes comparable benefits for employees who rely on spiritual means of healing;

(b) Comparable benefits for employees who rely on spiritual means of healing;

(c) Self insurance programs managed by the Board; and

(d) Employee assistance programs.

(2) "Benefits" means those goods and services provided under Benefit Plans.

(3) "Board" means the Public Employees' Benefit Board.

(4) "Consultant" means consultants, brokers or other advisory personnel hired by the Board pursuant to ORS 243.125(5) to assist in acquiring adequate Benefit Plan coverage for eligible state employees; assist in the study of all matters connected with the provision of adequate Benefit Plan coverage for eligible state employees; assist in the development and implementation of decision-making processes; design and implement additional programs to review, monitor and assist in the improvement of Eligible Employees and their dependents' health; and provide other services as required by the Board.

(5) "Contractor" means an individual or firm selected to provide Benefits and other services with whom the Board contracts;

(6) "Eligible Employee" shall have the same definition as is described in ORS 243.105(4).

(7) "Emergency" means an unusual circumstance that creates a substantial risk of interruption of Benefit services which would that requires prompt execution of a contract to remedy the condition.

(8) "Proposal" means a competitive Proposal, binding on the Proposer and submitted in response to a Request for Proposals, where Proposal evaluation and contract award are based on criteria such as Proposer qualifications and experience, product features and characteristics, service quality and efficiency and conformance with the specifications and requirements of the solicitation. Price may be an evaluation criterion for Proposals, but will not necessarily be the predominant basis for contract award.

(9) "Proposer" means a person or entity who submits a Proposal in response to a Request for Proposals.

(10) "Renewal Contractors" means those Contractors and Vendors who provided the same or similar employee Benefit Plan or other services under a contract with the Board in the year immediately prior.

(11) "Request for Proposals" or "RFP" means the written document soliciting competitive written Proposals and setting forth the criteria and method to be used by the Board to determine the Responsible Proposers offering the best Responsive Proposals.

(12) "Responsible Proposer" shall have the meaning described in OAR 101-005-0130.

(13) "Responsive (Non-Responsive) Proposer" shall have the meaning described in OAR 101-005-0120.

(14) "Single Source" means the only vendor of a particular product or service reasonably available. If the Board chooses to procure a particular Benefit or service that is only available from one vendor, documentation must be maintained to support the determination that the product or service is available only from that one seller.

(15) "Formal Selection Procedure" "Intermediate Procurement" means the process described in OAR 101-005-0040(1).

(16) "Informal Selection Procedure" "Small Procurement" means the process described in OAR 101-005-0040(2).

(17) "Extensive Procurement" means the process of securing vendors with whom PEBB will contract for services amounting to \$150,000.00 and over.

(18) "ORPIN" means the Oregon Procurement Information Network, an online service operated by the Department of Administrative Services that displays procurements and contracts issued by the State of Oregon's agencies.

(19) "Selection Committee" means the group of individuals comprised of PEBB staff, Board members, and/or constituents associated with PEBB who review, score, and recommend an Apparent Successful Proposer (ASP selected as a result of a Small, Intermediate or Extensive Procurement issued by PEBB) to the Board for approval.

(20) "Vendor" means the contractors with which PEBB will secure services that includes but is not limited to, printing and distributing Open Enrollment packets each year, newsletter construction and distribution each month, and online health information accessed by members.

Stat. Auth.: ORS 243.125(1)

Stats. Implemented: ORS 243.105(1), (2), & (4) & 243.125(5)

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-005-0040

Procurement and Renewal Processes

(1) Formal Selection Procedure Intermediate Procurement: This procedure will be used for the procurement of Benefits and other services that are contracted for under \$150,000 but over \$6000 in total cost. Exceptions to this procedure are specified in sections (2), (3), (4) and (5).

(a) Announcement: The Board will give notice of intent to contract for Benefits via the Vendor Information Program (VIP) System Oregon Procurement and Information Network (ORPIN), the Office of Minority, Women, and Small Emerging Business (OMWSEB), and in a trade periodical or newspaper of general circulation. The notice shall include a description of the Benefits or services sought, the scope of the services required, and a description of special requirements, if any. The notice will invite qualified prospective contractors to apply. The notice will specify when and where the application may be obtained, to whom it must be returned, and the closing date.

(b) Proposal: The Proposal from the prospective contractors will consist of a statement that describes the prospective contractor's credentials, performance data and other information sufficient to establish contractor's qualifications for providing the Benefits or services sought, as well as any other information requested in the announcement.

(c) Evaluation: The Board or its designees will evaluate the qualifications of all applicants and select prospective contractors as set forth in OAR 101-005-0110.

(d) Award of Contracts: The Board will make final selections based on the evaluation criteria including, but not limited to, applicant capability, experience, approach, compensation requirements, previous litigation and remedy applied, customer service history with PEBB, members, and clients; debarment status; and references, and will place emphasis on employee choice among high quality plans; plan performance and information; a competitive marketplace; employer flexibility in plan design and contracting; quality customer service; creativity and innovation; plan benefits as part of total employee compensation; and the improvement of employee health; and applicable vendor services benefiting PEBB.

(e) An Amendment(s) may be issued to the contract, but the cumulative Amendment(s) shall not increase the total Contract cost to a sum that is greater than twenty-five percent (25%) of the original Contract cost.

(2) Informal Selection Procedure Small Procurement: This procedure may be used at the Board's discretion, when the small procurement and informal selection procedure will not interfere with competition among prospective contractors, reduce the quality of services, is an amount less than \$6000 in contract costs, or will not increase costs. The Board may contact a minimum of three prospective contractors known to the Board to be qualified to propose the sought-after services. The selection will be made by the Board based upon the factors described in paragraph (1)(d) of this

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rule. If three quotes are not received, the Board will make a written record of its efforts to obtain quotes.

(a) An Amendment(s) may be issued to the contract, but the cumulative Amendment(s) shall not increase the total Contract cost to greater than \$6000.

(3) Single Source Procedure: PEBB may negotiate with a single source provider of Benefits if the services are available only from one contractor, or the prospective contractor has special skills uniquely required for the adequate performance of the services.

(a) An Amendment(s) may be issued to the contract, but the cumulative Amendment(s) shall not increase the total Contract cost to greater than twenty-five percent (25%) of the original Contract cost.

(4) Renewal Procedure: If the Board does not issue Small, Intermediate, or Single Source procurements to solicit formal proposals from qualified insurance carriers and Vendors, the Board may directly negotiate and enter into renewal contracts each Plan Year with Renewal Contractors and Vendors to provide Benefits and other services without following the procedures set forth in sections (1) and (2) above. The Board may renew contracts with Renewal Contractors and Vendors for as many years as the Board determines is in the best interest of the state and employees. The Board may invite renewal Proposals from those contractors who provided the same or similar employee Benefit Plan or other services in the year immediately prior. The Board will negotiate with Renewal Contractors and Vendors and enter into contracts with them after giving full consideration to the factors listed in paragraph (1)(d).

(5) Emergency Appointment Procedure: The Board may select a Benefit Plan or other service Contractor without following any of the above procedures when Emergency conditions require. In such instance, the recommended appointment and a written description of the conditions requiring the use of this appointment procedure shall be submitted to the Board. The Board will determine if an Emergency exists, declare the Emergency and negotiate a contract with the Contractor after giving full consideration to the factors listed in paragraph (1)(d).

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.135

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-005-0050

Mistakes

(1) Treatment of Mistakes. If the Board discovers certain mistakes in a Proposal after opening, but before award of the Contract, and the mistakes are not identified as those qualifying as non-responsive to the specifications of the procurement, the Board may take the following action:

(a) The Board may waive, or permit a Proposer to correct a minor informality. A minor informality is a matter of form(s) rather than substance that is evident on the face of the Proposal, or an insignificant mistake that can be waived or corrected without prejudice to other Proposers. Mistakes including, but not limited to, signatures not affixed to the proposal document, proposals sent to the incorrect address, insufficient number of proposals submitted, incorrect format, etc., will not be considered minor.

(b) The Board may correct a clerical error if the intended Proposal and the error are evident on the face of the Proposal, or other documents submitted with the Proposal, and the Proposer confirms the Board's correction in writing. A clerical error is a Proposer's error in transcribing its Proposal.

(2) Rejection for Mistakes. The Board may reject any Proposal in which a mistake is evident on the face of the Proposal and the intended correct Proposal is not evident or cannot be substantiated from documents accompanying the Proposal; i.e., documents submitted with the Proposal. In order to insure integrity of the competitive procurement process and to assure fair treatment of Proposers, mistakes discovered that are contrary to the specifications of the procurement will be carefully reviewed and will be determined, under the sole authority of the Board, to be waived or not be waived.

(3) If the Board discovers mistakes in the proposal after award, and the mistakes are not considered minor, the Board reserves the right to determine if the award will be revoked and then will re-evaluate proposals deemed to be in second, third, fourth, etc., in the standings.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.125(1)

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-005-0060

Records Maintenance

PEBB will maintain a file for seven (7) years on the selection process for all Benefits' and other services' Contracts entered on behalf of the state that will include, but will not be limited to:

- (1) The method and copy of announcement;
- (2) The names of firms or individuals and cost estimates considered;
- (3) The basis for selection;
- (4) A copy of the resulting contract and any subsequent amendments.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.135 & 243.125

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-005-0070

Contract Amendments (Including Supplemental Work)

An amendment for additional services that are reasonably related to the scope of work under the original Benefits Plan or other services' contract, including extra work, or change that increases the original contract price or length of time, may be made with the Contractor without re-entering the formal procurement process provided that the amendment does not materially alter such a contract.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.135 & 243.125

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-005-0075

Pre-Proposal Conference

(1) Unless identified in the procurement as required, the Pre-Proposal Conference will:

- (a) Include voluntary attendance;
- (b) Will be held in Salem, Oregon; and
- (c) Will identify attendees by name and company represented;

(2) If the Pre-Proposal Conference requires mandatory attendance by prospective proposers, no remuneration will be offered to prospective proposers for attendance, travel, document preparation, etc.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.135 & 243.125

Hist.: PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-005-0080

RFP Protest; Request for Change; Request for Clarification

(1) Protest.

(a) Unless otherwise specified in the RFP, a Proposer must deliver a written protest to the Board not less than 10 (ten) calendar days prior to closing;

(b) Content of Protest. A Proposer's written protest shall include:

(A) A detailed statement of the legal and factual grounds for the protest;

(B) A description of the resulting prejudice to the Proposer; and

(C) A statement of the desired changes to the RFP.

(2) Request for Change.

(a) Unless otherwise specified in the RFP, a Proposer may request in writing a change to the Contract terms and conditions. If the RFP allows for a Proposer to make a request for changes, and unless otherwise specified in the RFP, a Proposer must deliver the written request for change to the Board not less than 10 (ten) calendar days prior to closing;

(b) A Proposer's written request for change shall include a statement of the requested changes to the Contract terms and conditions, including specifications together with the reason for the requested change.

(3) Board Response. The Board shall not consider a Proposer's request for change or protest after the deadline established for submitting such request or protest. The Board shall provide notice to the applicable entity if it entirely rejects a protest. If the Board agrees with the entity's request or protest, in whole or in part, the Board shall either issue an addendum reflecting its determination under OAR 137-030-0055 137-047-0430. or cancel the solicitation under OAR 137-030-0115.

(4) Extension of Closing. If the Board receives a written request for change or protest from a Proposer in accordance with this rule, the Board may extend closing if the Board determines an extension is necessary to consider the request or protest and to issue an addendum, if any, to the RFP.

(5) Clarification. Prior to the deadline for submitting a written request for change or protest, a Proposer may request that the Board clarify any provision of the RFP. The Board's clarification to a Proposer, whether orally or in writing, does not change the RFP and is not binding on the Board unless the Board amends the RFP by addendum.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.135 & 243.125

ADMINISTRATIVE RULES

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-005-0090

Addenda to an RFP

(1) Issuance; Receipt. The Board may change an RFP only by written addenda. A Proposer shall provide written acknowledgement of receipt of all issued addenda with its Proposal, unless the Board otherwise specifies in the addenda.

(2) Notice and Distribution. The RFP shall specify how the Board will provide notice of addenda and how the Board will make the addenda available.

(3) Timelines; Extensions. The Board shall issue addenda within a reasonable time to allow prospective Proposers to consider the addenda in preparing their Proposals. The Board should extend the Closing if the Board determines prospective Proposers need additional time to review and respond to addenda. Except to the extent required by public interest, the Board shall not issue addenda less than 72 hours before the closing unless an addendum also extends the Closing.

(4) Request for Change or Protest. Unless a different deadline is set forth in an addendum, a Proposer may submit a written request for change or protest to the addendum by the close of the Board's next business day after issuance of the addendum.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.135 & 243.125

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-005-0100

Extension of Time for Acceptance of Proposal

The Board may request, orally or in writing that Proposers extend, in writing, the time during which the Board may consider their Proposal. If a Proposer agrees to such extension, the Proposal shall continue as irrevocable, valid and binding on the Proposer for the agreed-upon extension period.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.125(1)

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-005-0105

Submission of Proposals; Format; Timing

(1) All Proposals submitted as a result of a Formal Solicitation, Informal Solicitation, or Single Source Solicitation shall comply with the procurement's specifications. If portions of the Proposal to any solicitation are deemed unacceptable or non-responsive to the specifications of the solicitation, the Proposal will be deemed non-responsive and will not be given further evaluation or consideration. If a Proposal to any solicitation is delivered late, it will be deemed non-responsive to the specification of the solicitation and will be returned to the Proposer unopened.

(2) Submission of Proposals shall be in writing and shall be delivered in the written format, as required by the specifications of the solicitation. Proposals shall also be submitted electronically with the written Proposals and will be considered as a supplemental and not the sole format.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.125(1)

Hist.: PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-005-0110

Evaluation of Proposals

(1) Evaluation. The evaluation process described in this rule applies to the Formal Selection Procedure set forth in OAR 101-005-0040(1). The Board and any assigned representatives, including but not limited to, PEBB stakeholders and staff, hereinafter identified as the Selection Committee, shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Board shall not divulge the names of the Selection Committee until such time as the Board has completed the cost negotiations or the Apparent Successful Proposer has been announced. The Board shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best responsive Proposal or Proposals.

(2) Competitive Range; Protest; Award.

(a) Determining Competitive Range. If the Board does not cancel the solicitation, after the opening the Board will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Board will determine the Proposers in the competitive Range.

(b) Contesting Competitive Range. The Board shall provide written notice to all Proposers identifying Proposers in the competitive range. A

Proposer that is not within the competitive range may protest the Board's evaluation and determination of the competitive range in not more than two (2) business days after the Board has sent written e-mail notice of the competitive range to all Proposers. After opening, all Proposals are open for public inspection subject to the Oregon Public Records Law.

(c) Intent to Award; Discuss or Negotiate. After the protest period provided in accordance with paragraph (2)(b) expires, or after the Board has provided a final response to any protest, whichever date is later, the Board may engage in discussions and negotiations with Proposers in the competitive range.

(3) Discussions and Negotiations. If the Board chooses to enter into discussions and negotiations with the Proposers in the competitive range, the Board shall proceed as follows:

(a) Initiating Discussions. The Board shall initiate oral or written discussions and negotiations with all of the Proposers in the competitive range regarding their Proposals.

(b) Conducting Discussions. The Board may conduct discussions and negotiations with each Proposer in the competitive range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions or negotiations with each Proposer. The Board may terminate discussions and negotiations with any Proposer in the competitive range at any time. However, the Board shall offer all Proposers in the competitive range the opportunity to discuss their Proposals with the Board before the Board notifies Proposers of the award decisions.

(A) In conducting discussions, the Board and any designated representatives:

(i) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Shall not discuss Proposers' Proposals with any other Proposers and shall maintain all Proposals as confidential documents.

(iii) Shall not divulge the name(s) of the Proposers or the content of the Proposals until such time as cost negotiations are complete or an Apparent Successful Proposer has been announced.

(iv) Shall determine whether other factors, including but not limited to, Oregon residency of the primary business office and Proposer demonstration of services and products, will be used to determine the Apparent Successful Proposer, should a tie between Proposers occur.

(B) At any time during the time allowed for discussions and negotiations, the Board may:

(i) Continue discussions and negotiations with a particular Proposer or Proposers; or

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the competitive range;

(C) The Board may continue discussions and negotiations with Proposers until the Board has determined which Proposer or Proposers shall be awarded contracts.

(c) Intent to Award; Protest. The Board shall provide written notice to all Proposers in the competitive range of the Board's intent to award the contracts. An unsuccessful Proposer may protest the Board's intent to award in accordance with OAR 101-005-0140. After the protest period provided in accordance with OAR 101-005-0140 expires, or after the Board has provided a final response to any protest, whichever date is later, the Board may commence final Contract execution with the successful Proposer or Proposers.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.135 & 243.125

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-005-0120

Rejection of a Proposal

Rejection of Proposals.

(1) The Board may reject any Proposal for Benefit Plan, Consulting or Vendor services and deem the Proposal as non-responsive upon finding that include, but is not limited to:

(a) To accept the Proposal may impair the integrity of the procurement process;

(b) Rejecting the Proposal is in the state's or employees' interest;

(c) The Proposer failed to provide information as required in the specification of by the RFP;

(d) The Proposer takes exception to the terms and conditions in the proposed contract;

(e) The Proposer offers goods and services that fail to meet the specifications of the procurement;

(f) The Proposal is late or arrives at other than the location announced in the procurement;

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- (g) The Proposer has been debarred as set forth in ORS 279 B.130;
 - (h) The Proposer is not licensed to do business in Oregon;
 - (i) The Proposer has not attained licensure necessary to conduct business;
 - (j) The Proposer has not kept in good standing any licensure required to complete the contract;
 - (k) The Proposer providing Consulting services cannot attain nor keep in good standing the ability to receive payment commissions from insurance carriers;
 - (l) The Proposer will not provide nor adhere to the certification of non-discrimination required under ORS 279A.110(4);
 - (m) The Proposer is found non-responsible as described in ORS 279B.110 and OAR 101-005-0130.
- (2) The Board may reject all Proposals for good cause upon the Board's written finding it is in the state's or employees' interest to do so. The Board shall notify all Proposers of the rejection of all Proposals, along with the good cause justification and finding.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.135 & 243.125
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-005-0130 Responsible Proposer

Before awarding a Contract, the Board must have information that indicates the Proposer meets the applicable standards of responsibility. To be a Responsible Proposer, the Board must determine that the Proposer:

- (1) Is qualified legally to contract with the Board;
- (2) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Proposer fails to promptly supply information requested by the Board concerning responsibility, the Board may base the determination of responsibility upon any available information, or may find the Proposer non-responsible;
- (3) Is authorized to do business in Oregon;
- (4) Has not been debarred as provided for in ORS 279B.130;
- (5) Has the appropriate financial, material, equipment, facility and personnel resources and expertise necessary to indicate the capability of the Proposer to meet all contractual responsibilities;
- (6) Has a satisfactory record of contract performance, including no current materially deficiencies in contract performance, unless the deficiencies have been corrected or expressly excused;
- (7) Has a satisfactory record of business integrity, including no convictions for violations of confidentiality, monetary fraud, collusion, or the like.
- (8) Form(s) of Business Entity. For purposes of this rule, the Board may investigate any entity submitting a Proposal. The investigation may include that entity's officers, directors, owners, affiliates, or any other entity acquiring ownership of the entity within the last three (3) years to determine application of this rule.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.135 & 243.125
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-005-0140 Protest of Contractor Selection, Contract Award

(1) Purpose. An adversely affected or aggrieved Proposer must exhaust all avenues of administrative review and relief before seeking judicial review of the Board's Contractor selection or contract award decision.

(2) Notice of Intent to Award. Unless otherwise provided in the RFP, the Board shall provide written notice to all Proposers of the Board's intent to award the contract(s). The Board's award(s) shall not be final until the later of the following:

- (a) Seven (7) days after the date of the notice, unless the RFP provided a different period for protest; or
 - (b) The Board provides a written response to all timely filed protests that denies the protests and affirms the award.
- (3) Right to Protest Award. An adversely affected or aggrieved Proposer may submit to the Board a written protest of the Board's intent to award within fourteen (14) days after issuance of the notice of intent to award the contract, unless a different protest period is provided under the RFP.

(a) The Proposer's protest shall be in writing and must specify the grounds upon which the protest is based.

(b) A Proposer is adversely affected or aggrieved only if the Proposer is eligible for award of the contract as a Responsible Proposer and the Board committed a substantial violation of a provision in the RFP or of an

applicable procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated.

(c) The Board shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the RFP.

(4) Authority to Resolve Protests. The chairperson of the Board, or his or her designee, has the authority to settle or resolve a written protest submitted in accordance with the requirements of this rule.

(5) Decision. If a protest is not settled, the chairperson of the Board, or his or her designee, shall promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.

(6) Award. The successful Proposer shall promptly execute the contract after the award is final. The Board shall execute the contract only after it has obtained all applicable required documents and approvals.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.135 & 243.125
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-006-0010 Applicable Personal Service Contract Rules

The following provisions of the Department of Administrative Services' Personal Service Contracts rules listed below shall be applicable to PEBB's procurement contracts for services from Consultants or other Vendors, as that those terms are defined in OAR 101-005-0030(4) and (18). Where the following rules refer to the "Contracting Agency" or "Agency", it shall mean the Board. Where the following rules refer to "Contractors" performing Personal Services Contracts, it shall mean Consultants and Vendors. Where the following rules refer to approval by the Division or DAS, such requirement for approval is not incorporated in these rules, nor is such approval required for the Board to obtain, renew or amend contracts with Consultants and Vendors. Where the following rules indicate that an Agency shall provide notice to DAS or provide DAS with access to its records, such provisions are not incorporated in these rules and such obligations shall not apply to the Board. Applicable rules include OAR 125-020-0210 — Contract Form(s); 125-020-0300(2) and (3) — Introduction to Screening and Selection Procedures; 125-020-0310 — Solicitation Requirements; 125-020-0320 — Formal Selection Procedures; 125-020-0330 — Informal Selection Procedures; 125-020-0335 — Selection by Negotiation; 125-020-0340 — Emergencies; 125-020-0350(10 and (3) — Sole Source; 125-020-0360 — Protest Procedures; 125-020-0400 — Contract Requirements; 125-020-0410 — Independent Contractor Status; 125-020-0440 — Tax compliance; 125-020-0510 — Contract Files; and 125-020-0520(1), (2), (4), (5), (7)(a)(A) and (7)(a)(B) — Contract Amendments.

Stat. Auth.: ORS 243.061 - 243.301
Stats. Implemented: ORS 243.125(1) & (5)
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

101-006-0020 Renewal process for Consultant and Vendor Contracts

(1) Renewal Procedure: If the Board does not issue a procurement to solicit formal proposals from Consultants and Vendors, the Board may directly negotiate and enter into renewal contracts with Renewal Contractors and Vendors to provide Consultant and other Vendor services without following the procedures set forth in OAR 101-006-0010. The Board may renew contracts with Renewal Contractors and Vendors for as many years as the Board determines is in the best interest of the state. The Board may invite renewal Proposals from those contractors who provided the same or similar Consultant and other Vendor services in the year immediately prior.

(2) The Board will negotiate with Renewal Contractors and Vendors and enter into contracts with them after giving full consideration to the following factors which include, but are not limited to: applicant capability, experience, approach, compensation requirements and references.

Stat. Auth.: ORS 243.061 - 242.301
Stats. Implemented: ORS 242.125(1) & (5)
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 2-2005, f. 7-26-05, cert. ef. 7-29-05

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

Adm. Order No.: BCD 19-2005(Temp)
Filed with Sec. of State: 8-15-2005
Certified to be Effective: 8-15-05 thru 2-1-06

ADMINISTRATIVE RULES

Notice Publication Date:

Rules Adopted: 918-283-0005

Rules Amended: 918-283-0010

Subject: This rulemaking establishes a method for electrical licensees that renew on October 1, 2005 to bring excess code-change continuing education hours forward to the next license cycle and eliminates code-change continuing education for electrical contractors.

Rules Coordinator: Nicole M. Jantz—(503) 373-7438

918-283-0005

Code-Change Continuing Education Credit Carry-over

The purpose of this rule is to allow **2005 Oregon Electrical Specialty Code (OESC)** code-change continuing education credits to carry-over to the next license cycle for licensees that expire on October 1, 2005.

(1) Class "A" Limited Energy Technician, Class "B" Limited Energy Technician, Limited Journeyman Manufacturing Plant Electrician and Limited Maintenance Electrician licensees are allowed to carry-over a maximum of 8 hours of 2005 OESC code-change credits to the next license cycle, if the licensee:

- (a) Completed more than 24 hours continuing education, and
- (b) More than 8 hours code change before October 1, 2005.

(2) Limited Renewable Energy Technician, Limited Journeyman Sign Electrician, Limited Journeyman Stage Electrician, and Limited Building Maintenance Electrician licensees are allowed to carry-over a maximum of 4 hours of 2005 OESC code-change credits to the next license cycle if the licensee completed more than 4 hours code-change credits before October 1, 2005.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183.335(5), 479.680 & 479.910
Stats. Implemented: ORS 479.650, 479.680 & 479.910
Hist.: BCD 19-2005(Temp), f. & cert. ef. 8-15-05 thru 2-1-06

918-283-0010

Continuing Education Required; Exemptions

This rule outlines the electrical license general continuing education requirements, code-change continuing education requirements, and exemptions.

(1) The following licensees must complete a minimum of 24 class or correspondence course hours of board-approved continuing education before renewing a license. At least eight of the 24 hours must be OESC code-change continuing education.

- (a) General Supervising Electrician;
- (b) General Journeyman Electrician;
- (c) Limited Supervising Electrician;
- (d) Limited Journeyman Manufacturing Plan Electrician;
- (e) Limited Residential Electrician; and
- (f) Class "A" and Class "B" Limited Energy Technicians.

(2) The following licensees must complete at least four hours board-approved code-change continuing education before renewing a license:

- (a) Limited Journeyman Sign;
- (b) Limited Journeyman Stage;
- (c) Limited Building Maintenance; and
- (d) Limited Renewable Energy Technician.

(3) During electrical code change years, the code change credits shall be obtained prior to or no later than one year after the effective date of the applicable code. The required code-change hours shall be obtained within 12 months of obtaining an Oregon reciprocal license.

(4) Exemptions. The following licenses are exempt from continuing education requirements:

- (a) Electrical contractors;
- (b) Limited Pump Installation Specialty Contractor;
- (c) Limited Maintenance Specialty Contractor HVAC/R;
- (d) Limited Energy Contractor;
- (e) Restricted Energy Contractor;
- (f) Limited Sign Contractor;
- (g) Limited Maintenance Specialty Contractor;
- (h) Limited Renewable Energy Contractor;
- (i) Apprentices in approved programs; and
- (j) Class II oil module electricians.

(5) Continuing education requirements may be prorated for those who obtain licenses during any three-year renewal cycle. The continuing education requirement for the licensing period is waived for those who obtain licenses within 90 days or less of a three-year renewal date.

(6) Continuing education instructors shall receive credit for type of courses taught.

(7) Upon receipt of documentation acceptable to the division, individuals ordered to active military duty for other than training, for a period exceeding 60 consecutive days, shall not be required to comply with the provisions of this rule during the period of active duty. Following release from active duty, individuals must complete continuing education requirements acceptable to the division. Other licensing requirements may not be waived under this exemption.

(8) The board may waive, on a case by case basis, the provisions of this rule in the event of catastrophic illness or circumstance.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 479.650 & 479.680

Stats. Implemented: ORS 479.650 & 479.680

Hist.: DC 16-1986, f. & ef. 10-14-86; Renumbered from 814-022-0450; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-280-0020; BCD 19-1997(Temp), f. & cert. ef. 10-3-97 thru 5-31-98; BCD 13-1998(Temp), f. & cert. ef. 7-31-98 thru 1-26-99; BCD 17-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 23-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 6-29-02; BCD 9-2002, f. 3-29-02, cert. ef. 4-1-02; BCD 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 25-2002, f. & cert. ef. 10-1-02; BCD 17-2003(Temp), f. & cert. ef. 10-29-03 thru 4-25-04; Administrative correction 8-5-04; BCD 19-2005(Temp), f. & cert. ef. 8-15-05 thru 2-1-06

Department of Consumer and Business Services, Insurance Division Chapter 836

Adm. Order No.: ID 10-2005

Filed with Sec. of State: 7-26-2005

Certified to be Effective: 7-26-05

Notice Publication Date: 6-1-05

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

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

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

836-052-0114

Applicability and Scope

(1) Except as otherwise specifically provided in OAR 836-052-0134, 836-052-0140, 836-052-0145, 836-052-0160 and 836-052-0185, OAR 836-052-0103 to 836-052-0194 apply to the following Medicare supplement policies and certificates issued under group Medicare supplement policies, as follows:

(a) All Medicare supplement policies delivered or issued for delivery in this state on or after July 1, 1992; and

(b) All certificates issued under group Medicare supplement policies and delivered or issued for delivery in this state on or after July 1, 1992.

(2) Except as otherwise specifically provided in OAR 836-052-0134, 836-052-0140, 836-052-0154, 836-052-0160, and 836-052-0185, on or after September 1, 1993, OAR 836-052-0103 to 836-052-0194 apply to Medicare supplement policies and certificates issued under group Medicare supplement policies that are made subject to OAR 836-052-0103 to 836-052-0194 because of amendments to the definition of "Medicare supplement policy" in ORS 743.680 and OAR 836-052-0119.

(3) A prepayment plan offered by a health maintenance organization under which the health maintenance organization and competitive medical plans provides Medicare services under the authority of Title XVIII Part C of the Social Security Act or Section 1876 of the federal Social Security Act (42 U.S.C. section 1395 et seq.) is not subject to OAR 836-052-0103 through 836-052-0194. The health maintenance organization and competitive medical plans must file with the Director, for information purposes, a copy of the Medicare contract forms and rates that the plan or health maintenance organization uses in this state, and the marketing and sales materials used therewith.

(4) OAR 836-052-0103 to 836-052-0194 do not apply to an issued policy under a demonstration project specified in 42 U.S.C. sec. 1395ss (g)(1).

(5) OAR 836-052-0103 to 836-052-0194 do not apply to a policy or contract of one or more employers or labor organizations; or of the trustees

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of a fund established by one or more employers or labor organizations, or combination thereof; for employees or former employees, or a combination thereof; or for members or former members, or a combination thereof, of the labor organizations.

(6) OAR 836-052-0103 to 836-052-0194 are effective on August 1, 2005. Insurers may continue using current forms, or may make changes to current forms if offering Plan K or L, as appropriate, through 2005. Insurers may offer any authorized plan upon approval by the Director of the Department of Consumer and Business Services.

Stat. Auth.: ORS 731.244 & 743.682

Stats. Implemented: ORS 743.010 & 743.683

Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 5-1996, f. & cert. ef. 4-26-96; ID 9-1997, f. & cert. ef. 7-10-97; ID 10-2005, f. & cert. ef. 7-26-05

836-052-0119

Definitions

As used in OAR 836-052-0103 to 836-052-0194:

(1) "Applicant" means:

(a) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits;

(b) In the case of a group Medicare supplement policy, the proposed certificate holder.

(2) "Bankruptcy" occurs when a Medicare Advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

(3) "Certificate" means any certificate delivered or issued for delivery under a group Medicare supplement policy.

(4) "Certificate Form" means the form on which the certificate is delivered or issued for delivery by the issuer.

(5) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no break in coverage greater than 63 days.

(6)(a) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(A) A group health plan;

(B) Health insurance coverage;

(C) Part A or Part B of Title XVIII of the Social Security Act (Medicare);

(D) Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under section 1928;

(E) Chapter 55 of Title 10 United States Code (CHAMPUS);

(F) A medical care program of the Indian Health Service or of a tribal organization;

(G) A state health benefits risk pool;

(H) A health plan offered under chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program);

(I) A public health plan as defined in federal regulation; and

(J) A health benefit plan under Section 5(e) of the Peace Corps Act (22 United States Code 2504(e)).

(b) "Creditable coverage" does not include one or more, or any combination of the following:

(A) Coverage only for accident or disability income insurance, or any combination thereof;

(B) Coverage issued as a supplement to liability insurance;

(C) Liability insurance, including general liability insurance and automobile liability insurance;

(D) Workers' compensation or similar insurance;

(E) Automobile medical payment insurance;

(F) Credit-only insurance;

(G) Coverage for on-site medical clinics; and

(H) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other medical benefits.

(c) "Creditable coverage" does not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

(A) Limited scope dental or vision benefits;

(B) Benefits for long-term care, nursing home care, home health care, community based care, or any combination thereof; and

(C) Such other similar, limited benefits as are specified in federal regulations.

(d) "Creditable coverage" does not include the following benefits if offered as independent noncoordinated benefits:

(A) Coverage only for a specified disease or illness; and

(B) Hospital indemnity or other fixed indemnity insurance.

(e) "Creditable coverage" shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

(A) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

(B) Coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code; and

(C) Similar supplemental coverage provided to coverage under a group health plan.

(7) "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. Section 1002 (Employee Retirement Income Security Act).

(8) "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

(9) "Insurance Policy" includes a subscriber contract or a prepayment contract of a health care service contractor and a policy or contract of a fraternal benefit society.

(10) "Issuer" includes insurers, fraternal benefit societies, health care service plans, health maintenance organizations as that term is defined in ORS 750.005, health care service contractors as that term is defined in ORS 750.005, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

(11) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(12) Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C.1395w-28(b)(1), and includes:

(a) Coordinated care plans that provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;

(b) Medical savings account plans coupled with a contribution into a Medicare Advantage medical savings account; and

(c) Medicare Advantage private fee-for-service plans.

(13) "Medicare Supplement Policy" means a group or individual insurance policy or a subscriber contract, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. section 1395 et seq.) or an issued policy under a demonstration project specified in 42 U.S.C. section 1395ss(g)(1) that is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare. "Medicare Supplement policy" does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D or any Health Care Prepayment Plan (HCPP) that provides benefits pursuant to an agreement under sec. 1833(a)(1)(A) of the Social Security Act.

(14) "Policy Form" means the form on which the policy is delivered or issued for delivery by the issuer.

(15) "Secretary" means the Secretary of the United States Department of Health and Human Services.

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

Stat. Auth.: ORS 731.244 & 743.682

Stats. Implemented: ORS 743.010 & 743.683

Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 5-1996, f. & cert. ef. 4-26-96; ID 21-1998(Temp), f. 12-8-98, cert. ef. 1-1-99 thru 6-25-99; ID 4-1999, f. & cert. ef. 4-29-99; ID 6-2001, f. & cert. ef. 5-22-01; ID 10-2005, f. & cert. ef. 7-26-05

836-052-0124

Policy Definitions and Terms

A policy or certificate may not be advertised, solicited or issued for delivering in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms that conform to the following requirements:

(1) "Accident," "accidental injury" or "accidental means" shall be defined to employ "result" language and shall not include words that establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization. The following provisions also apply to definition of the terms under this section:

(a) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided" means accidental bodily injury sustained by the insured person that is the direct result of an acci-

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dent, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force”;

(b) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any worker’s compensation, employer’s liability or similar law or motor vehicle no-fault plan, unless prohibited by law.

(2) “Benefit period” or “Medicare benefit period” shall not be defined more restrictively than as defined in the Medicare program.

(3) “Convalescent nursing home,” “extended care facility” or “skilled nursing facility” shall not be defined more restrictively than as defined in the Medicare program.

(4) “Health care expenses” means, for OAR 836-052-0145, expenses of health maintenance organizations associated with the delivery of health care services which expenses are analogous to incurred losses of insurers.

(5) “Hospital” may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals but not more restrictively than as defined in the Medicare program.

(6) “Medicare” shall be defined in the policy and certificate. “Medicare” may be substantially defined as “The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended,” or “Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof,” or words of similar import.

(7) “Medicare eligible expenses” shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

(8) “Physician” shall not be defined more restrictively than as defined in the Medicare program.

(9) “Sickness” shall not be defined to be more restrictive than the following: “Sickness means illness or disease of an insured person that manifests itself after the effective date of insurance and while the insurance is in force.” The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any worker’s compensation, occupational disease, employer’s liability or similar law.

Stat. Auth.: ORS 743.683

Stats. Implemented: ORS 743.010 & 743.683

Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 5-1996, f. & cert. ef. 4-26-96; ID 9-1997, f. & cert. ef. 7-10-97; ID 10-2005, f. & cert. ef. 7-26-05

836-052-0129

Policy Provisions

(1) Except for permitted preexisting condition clauses as described in OAR 836-052-0133(2)(a) and 836-052-0134(2)(a), no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(2) No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(3) No Medicare supplement policy or certificate in force in the state shall contain benefits that duplicate benefits provided by Medicare.

(4)(a) Subject to OAR 836-052-0133(2)(d) and (e), and 836-052-0134(2)(d), (e) and (g), a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006 may be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(b) A Medicare supplement policy with benefits for outpatient prescription drugs may not be issued after December 31, 2005.

(c) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

(A) The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual’s coverage under a Part D plan; and

(B) Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

Stat. Auth.: ORS 743.683

Stats. Implemented: ORS 743.010 & 743.683

Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1996, f. & cert. ef. 4-26-96; ID 10-2005, f. & cert. ef. 7-26-05

836-052-0133

Benefit Standards for Policies or Certificates Issued for Delivery on or After July 1, 1992

(1) The following standards in this rule are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after July 1, 1992. A policy or certificate may not be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with or exceeds the benefit standards set forth in this rule.

(2) The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of OAR 836-052-0103 to 836-052-0194.

(a) Regarding preexisting conditions, a Medicare supplement policy or certificate shall not:

(A) Exclude or limit benefits for a loss incurred more than six months after the effective date of coverage because the loss involved a preexisting condition. The benefits shall be available after the period of exclusion or limitation permitted under this subsection whether or not a claim concerning the condition was made during the period and whether or not a physician gave medical advice or recommended or gave treatment concerning the condition during the period;

(B) Define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not cover losses resulting from sickness on a different basis than losses resulting from accidents;

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes. An insurer must justify any premium modification actuarially and must obtain approval from the Director before implementing the modification;

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium;

(e) Each Medicare supplement policy shall be guaranteed renewable for the life of the individual in the case of an individual policy and the life of the group in the case of a group policy. In addition:

(A) The insurer shall not cancel or nonrenew the policy on the ground of the health status of the individual;

(B) The insurer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or a material misrepresentation that is discovered within two years after the effective date of coverage;

(C) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under paragraph (E) of this subsection, the issuer shall offer certificate holders an individual Medicare supplement policy at standard rates and without any waiver, limitation or exclusion, that at the option of the certificate holder:

(i) Provides for continuation of the benefits contained in the group policy; or

(ii) Provides for benefits that otherwise meet the requirements of this section.

(D) If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) Offer the certificate holder the conversion opportunity described in paragraph (C) of this subsection; or

(ii) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(E) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy, whether the same or a different issuer, shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced;

(F) This subsection does not prohibit rate increases otherwise authorized by law.

(G) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the mod-

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ified policy shall be deemed to satisfy the guaranteed renewal requirements of this section.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(g)(A) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period, not to exceed 24 months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of the policy or certificate within 90 days after the date the policyholder or certificate holder becomes entitled to the assistance.

(B) If the suspension occurs and if the insured loses entitlement to the medical assistance, the policy or certificate shall be automatically reinstated, effective as of the date of termination of such entitlement, if the insured provides notice of loss of the entitlement within 90 days after the date of the loss and pays the premium attributable to the period;

(C) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended for the period provided by federal regulation at the request of the policyholder if the policyholder is entitled to benefits under section 226(b) of the Social Security Act and is covered under a group health plan as defined in section 1862(b)(1)(A)(v) of the Social Security Act. If the suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan the policy shall be automatically reinstated effective as of the date of loss of coverage if the policyholder provides notice of loss of coverage within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(D) Reinstitution of the coverage:

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of such suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstatement of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the insured as the premium classification terms that would have applied to the insured had the coverage not been suspended.

(3) This section establishes standards for basic or core benefits common to benefit plans A to J. Each issuer shall make available to each prospective insured a policy or certificate including only the basic or core package of benefits established in this section. An issuer may make available to prospective insured any of the other Medicare supplement insurance benefit plans in addition to the basic core package, but not in lieu of it. The basic core package includes the following:

(a) Coverage of Part A Medicare Eligible Expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare Eligible Expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day use;

(c) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance. Billing the insured for any such balance is an unfair practice in the transaction of insurance that is injurious to the insurance-buying public, and is a violation of ORS 746.240;

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(e) Coverage for the coinsurance amount, or in the case of hospital outpatient department services under a prospective payment system, the

copayment amount, of Medicare Eligible Expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(4) This section establishes standards for additional benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by OAR 836-052-0136:

(a) Medicare Part A Deductible benefit, providing coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period;

(b) Skilled Nursing Facility Care benefit, providing coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A;

(c) Medicare Part B Deductible benefit, providing coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement;

(d) 80 percent of the Medicare Part B Excess Charges benefit, providing coverage for 80 percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;

(e) 100 percent of the Medicare Part B Excess charges benefit, providing coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;

(f) Basic Outpatient Prescription Drug benefit, providing coverage for 50 percent of outpatient prescription drug charges, after a \$250 calendar year deductible, to a maximum of \$1,250 in benefit received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006;

(g) Extended Outpatient Prescription Drug benefit, providing coverage for 50 percent of outpatient prescription drug charges, after a \$250 calendar year deductible to a maximum of \$3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(h) Medically Necessary Emergency Care in a Foreign Country, providing coverage to the extent not covered by Medicare for 80 percent of the billed charges for Medicare eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, when the care would have been covered by Medicare if provided in the United States and when the care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of \$250, and a lifetime maximum benefit of \$50,000. For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden or unexpected onset;

(i) Preventive Medical Care benefit, providing coverage for the preventive health services set forth in this subsection that are not covered by Medicare. Reimbursement shall be for the actual charges up to 100 percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of \$120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare. The preventive health services are:

(A) An annual clinical preventive medical history and physical examination that may include tests and services from paragraph (B) of this subsection and patient education to address preventive health care measures;

(B) Preventive screening tests or preventive services, the selection and frequency of which is determined to be medically appropriate by the attending physician.

(j) At-home recovery benefit, providing coverage for services to furnish short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery. The following provisions apply to the at-home recovery benefit:

(A) For purposes of the benefit, the following definitions apply:

(i) "Activities of Daily Living" include but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self administered, and changing bandages or other dressings;

(ii) "Care Provider" means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry;

(iii) "Home" means any place used by the insured as a place of residence, if the place would qualify as a residence for home health care serv-

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ices covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence;

(iv) "At-Home Recovery Visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except that each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.

(B) Coverage requirements and limitations are as follows:

(i) At-home recovery services provided must be primarily services that assist in activities of daily living;

(ii) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare;

(iii) Coverage is limited to:

(I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(II) The actual charges for each visit up to a maximum reimbursement of \$40 per visit;

(III) \$1,600 per calendar year;

(IV) Seven visits in any one week;

(V) Care furnished on a visiting basis in the insured's home;

(VI) Services provided by a care provider as defined in subparagraph

(A)(ii) of this subsection;

(VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;

(VIII) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight weeks after the service date of the last Medicare approved home health care visit.

(C) Coverage is excluded for:

(i) Home care visits paid for by Medicare or other government programs; and

(ii) Care provided by family members, unpaid volunteers, or providers who are not care providers.

(5) Standards for Plans K and L:

(a) Standardized Medicare supplement benefit plan "K" shall consist of the following:

(A) Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

(B) Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

(C) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(D) Medicare Part A Deductible: Coverage for 50 percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in paragraph (J) of this subsection;

(E) Skilled Nursing Facility Care: Coverage for 50 percent of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in paragraph (J) of this subsection;

(F) Hospice Care: Coverage for 50 percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in paragraph (J) of this subsection;

(G) Coverage for 50 percent, under Medicare Part A or B, of the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in paragraph (J) of this subsection;

(H) Except for coverage provided in paragraph (I) of this subsection, coverage for 50 percent of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in paragraph (J) of this subsection;

(I) Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(J) Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of \$4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(b) Standardized Medicare supplement benefit plan "L" shall consist of the following:

(A) The benefits described in subsection (a)(A), (B), (C), and (I) of this section;

(B) The benefit described in subsection (a)(D), (E), (F), (G), and (H) of this section, but substituting 75 percent for 50 percent; and

(C) The benefit described in subsection (a)(J) of this section, but substituting \$2000 for \$4000.

Stat. Auth.: ORS 743.683

Stats. Implemented: ORS 743.010 & 743.683

Hist.: ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 5-1996, f. & cert. ef. 4-26-96; ID 9-1997, f. & cert. ef. 7-10-97; ID 4-1999, f. & cert. ef. 4-29-99; ID 6-2001, f. & cert. ef. 5-22-01; ID 10-2005, f. & cert. ef. 7-26-05

836-052-0134

Minimum Benefit Standards for Policies or Certificates Issued for Delivery Prior to July 1, 1992

(1) A policy or certificate may not be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the standards described in this rule. The standards described in this rule are minimum standards and do not preclude the inclusion of other provisions or benefits that are not inconsistent with the standards.

(2) The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of OAR 836-052-0103 to 836-052-0194:

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses insured more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage;

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents;

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes. An insurer must justify any premium modification actuarially and must obtain approval from the Director before implementing the modification;

(d) A "noncancelable," "guaranteed renewable" or "noncancelable and guaranteed renewable" Medicare supplement policy shall not:

(A) Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(B) Be canceled or nonrenewed by the issuer on the grounds of deterioration of health.

(e)(A) Except as authorized by the Director, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or a material misrepresentation;

(B) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in paragraph (D) of this subsection, the issuer shall offer certificate holders an individual Medicare supplement policy. The issuer shall offer the certificate holder at least the following choices:

(i) An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

(ii) An individual Medicare supplement policy that provides only such benefits as are required to meet the minimum standards as defined in OAR 836-052-0133(3).

(C) If membership in a group is terminated, the issuer shall:

(i) Offer the certificate holder the conversion opportunities described in paragraph (B) of this subsection; or

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(ii) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(D) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced;

(E) This subsection does not prohibit rate increases otherwise authorized by law.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(g) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this section.

(3) The following minimum benefit standards apply:

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(d) Upon exhaustion of all Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of ninety percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare, subject to a lifetime maximum benefit of an additional 365 days;

(e) Coverage under Medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

(f) Coverage for the co-insurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible (\$100);

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount; and

(h) Effective January 1, 1990, coverage for the coinsurance amount of Medicare eligible expenses for outpatient drugs used in immunosuppressive therapy, subject to the Medicare outpatient prescription drug deductible, if applicable.

Stat. Auth.: ORS 743.010 & 743.683

Stats. Implemented: ORS 743.010 & 743.683

Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1996, f. & cert. ef. 4-26-96; ID 9-1997, f. & cert. ef. 7-10-97; ID 10-2005, f. & cert. ef. 7-26-05

836-052-0136

Standard Medicare Supplement Benefit Plans

(1) An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic core benefits, as defined in OAR 836-052-0133(3).

(2) No groups, packages or combinations of Medicare supplement benefits other than those listed in this rule shall be offered for sale in this state except as may be permitted in section (6) of this rule and in OAR 836-052-0139.

(3) Benefit plans must be uniform in structure, language, designation and format to the standard benefit plans "A" through "L" listed in this rule and conform to the definitions in OAR 836-052-0119. Each standard benefit plan must be designated by the letter assigned to it under this rule. Each benefit must be structured in accordance with the format provided in OAR 836-052-0133(3) and (4) or (5) and list the benefits in the order shown in this rule. For purposes of this rule, "structure, language, and format" means style, arrangement, and overall content of a benefit.

(4) In addition to the benefit plan designations required in section (3) of this rule, an issuer may use other designations to the extent permitted by law.

(5) The content of benefit plans must be as follows:

(a) Standardized Medicare supplement benefit plan "A" shall be limited to the basic core benefits common to all benefit plans, as defined in OAR 836-052-0133(3);

(b) Standardized Medicare supplement benefit plan "B" shall include only the following: The core benefit as defined in OAR 836-052-0133(3), plus the Medicare Part A Deductible as defined in OAR 836-052-0133(4)(a);

(c) Standardized Medicare supplement benefit plan "C" shall include only the following: the core benefit as defined in OAR 836-052-0133(3), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible and Medically Necessary Emergency Care in a Foreign Country, each as defined in OAR 836-052-0133(4);

(d) Standardized Medicare supplement benefit plan "D" shall include only the following: The core benefit, as defined in OAR 836-052-0133(3), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and the At-Home Recovery Benefit, each as defined in OAR 836-052-0133(4);

(e) Standardized Medicare supplement benefit plan "E" shall include only the following: The core benefit as defined in OAR 836-052-0133(3), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and Preventive Medical Care, each as defined in OAR 836-052-0133(4);

(f) Standardized Medicare supplement benefit plan "F" shall include only the following: The core benefit as defined in OAR 836-052-0133(3), plus the Medicare Part A Deductible, the Skilled Nursing Facility Care, the Part B Deductible, 100 percent of the Medicare Part B excess Charges and Medically Necessary Emergency Care in a Foreign Country, each as defined in OAR 836-052-0133(4);

(g) Standardized Medicare supplement benefit high deductible plan "F" shall include only the following: 100 percent of covered expenses following the payment of the annual high deductible plan "F" deductible. The covered expenses include the core benefit as defined in OAR 836-052-0133(3), plus the Medicare Part A Deductible, skilled nursing facility care, the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges and medically necessary emergency care in a foreign country, each as defined in OAR 836-052-0133(4). The annual high deductible plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be \$1500 for 1998 and 1999, and shall be based on the calendar year. The deductible shall be adjusted annually thereafter according to the method prescribed in 42 U.S.C. 1395ss(p)(11)(C) to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of \$10.

(h) Standardized Medicare supplement benefit plan "G" shall include only the following: The core benefit as defined in OAR 836-052-0133(3), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, 80 percent of the Medicare Part B Excess Charges, Medically Necessary Emergency Care in a Foreign Country, and the At-Home Recovery Benefit, each as defined in OAR 836-052-0133(4).

(i) Standardized Medicare supplement benefit plan "H" shall consist of only the following: The core benefit as defined in OAR 836-052-0133(3), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Basic Prescription Drug Benefit and Medically Necessary Emergency Care in a Foreign Country, each as defined in OAR 836-052-0133(4). The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005;

(j) Standardized Medicare supplement benefit plan "I" shall consist of only the following: The core benefit as defined in OAR 836-052-0133(3), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, 100 percent of the Medicare Part B Excess Charges, Basic Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country and At-Home Recovery Benefit, each as defined in OAR 836-052-0133(4). The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005;

(k) Standardized Medicare supplement benefit plan "J" shall consist of only the following: The core benefit as defined in OAR 836-052-0133(3), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible, 100 percent of the Medicare Part B Excess Charges, Extended Prescription Drug Benefit, Medically Necessary

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Emergency Care in a Foreign Country, Preventive Medical Care and At-Home Recovery Benefit, each as defined in OAR 836-052-0133(4). The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(1) Standardized Medicare supplement benefit high deductible plan "J" shall consist of only the following: 100 percent of covered expenses following the payment of the annual high deductible plan "J" deductible. The covered expenses include the core benefit as defined in OAR 836-052-0133(3), plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at home recovery benefit, each as defined in OAR 836-052-0133(4). The annual high deductible plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be \$1500 for 1998 and 1999, and shall be based on a calendar year. The deductible shall be adjusted annually thereafter according to the method prescribed in 42 U.S.C. 1395ss(p)(11)(C) to reflect the change in the Consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of \$10. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(6) Make-up of two additional Medicare supplement plans mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA);

(a) Standardized Medicare supplement benefit plan "K" shall consist of only those benefits described in OAR 836-052-0133(5).

(b) Standardized Medicare supplement benefit plan "L" shall consist of only those benefits described in OAR 836-052-0133(5).

(7) New or innovative benefits. With the prior approval of the Director, an issuer may offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective and offered in a manner consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

Stat. Auth.: ORS 743.683

Stats. Implemented: ORS 743.010(1)(a), (2) & 743.683(2)

Hist.: ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 2-1995, f. & cert. ef. 4-26-95; ID 9-1997, f. & cert. ef. 7-10-97; ID 21-1998(Temp), f. 12-8-98, cert. ef. 1-1-99 thru 6-25-99; ID 4-1999, f. & cert. ef. 4-29-99; ID 6-2001, f. & cert. ef. 5-22-01; ID 10-2005, f. & cert. ef. 7-26-05

836-052-0138

Open Enrollment

(1) An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a Medicare supplement policy or certificate that is submitted to the issuer prior to or during the six month period beginning with the first day of the first month in which an individual is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an issuer shall be made available on a guaranteed issue basis to all applicants who qualify under this section without regard to age.

(2)(a) If an applicant qualifies under section (1) of this rule and submits an application during the time period referenced in section (1) of this rule and, as of the date of application, has had a continuous period of creditable coverage of at least six months, the issuer shall not exclude benefits based on a preexisting condition;

(b) If the applicant qualifies under section (1) of this rule and submits an application during the time period referenced in section (1) of this rule and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The manner of the reduction under this subsection shall be the manner prescribed in 42 USC 300gg(a)(3) as of the effective date of this rule.

(3) Except as provided in section 2 of this rule and OAR 836-052-00142 and 836-052-0190, section (1) of this rule shall not be construed as preventing the exclusion of benefits under a policy, during the first six months, based on a preexisting condition for which the policyholder or cer-

tificate holder received treatment or was otherwise diagnosed during the six months before the coverage became effective.

(4) This section applies to a person who qualifies for Medicare by reason of disability and who obtains a Medicare supplement policy during the six month period described in section (1) of this rule. For the period that a person to whom this section applies is 65 years of age or less, the premium charged the person by the issuer shall not be greater than the premium charged by the issuer for persons who are 65 years of age. Following that period, for issuers who charge rates on policies on the basis of attained age, the rating plan shall not differentiate on the basis of the reason for eligibility for Medicare Part B.

(5) An issuer must comply with section (1) of this rule with respect to a person:

(a) Who qualifies for Medicare by reason of disability, who first enrolls for benefits under Medicare Part B on or after September 1, 1993, and who applies for a Medicare supplement policy or certificate during the period of eligibility described in section (1) of this rule; or

(b) Who enrolled in Medicare Part B before attaining 65 years of age, who applies for a Medicare supplement policy or certificate upon attaining 65 years of age, during the period of eligibility described in section (1) of this rule that would apply if the person first enrolled in Medicare Part B upon attaining 65 years of age.

Stat. Auth.: ORS 743.683

Stats. Implemented: ORS 743.010 & 743.683

Hist.: ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 5-1996, f. & cert. ef. 4-26-96; ID 21-1998(Temp), f. 12-8-98, cert. ef. 1-1-99 thru 6-25-99; ID 4-1999, f. & cert. ef. 4-29-99; ID 6-2001, f. & cert. ef. 5-22-01; ID 10-2005, f. & cert. ef. 7-26-05

836-052-0139

Medicare Select Policies and Certificates

(1) This section applies to Medicare Select policies and certificates, as defined in this rule.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this rule.

(3) For the purposes of this rule:

(a) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers;

(b) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers;

(c) "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate;

(d) "Medicare Select policy" or "Medicare Select certificate" means respectively a Medicare supplement policy or certificate that contains restricted network provisions;

(e) "Network provider" means a provider of health care, or a group of providers of health care, that has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy;

(f) "Restricted network provision" means any provision that conditions the payment of benefits, in whole or in part, on the use of network providers; and

(g) "Service area" means the geographic area approved by the Director of the Department of Consumer and Business Services within which an issuer is authorized to offer a Medicare Select policy.

(4) The Director may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the Director finds that the issuer has satisfied all of the requirements of OAR 836-052-0103 to 836-052-0194.

(5) A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the Director.

(6) A Medicare Select issuer shall file a proposed plan of operation with the Director in a format prescribed by the Director. The plan of operation shall contain at least the following information:

(a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(A) Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community;

(B) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

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(i) To deliver adequately all services that are subject to a restricted network provision; or

(ii) To make appropriate referrals.

(C) There are written agreements with network providers describing specific responsibilities;

(D) Emergency care is available 24 hours per day and seven days per week; and

(E) In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This subparagraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(b) A statement or map providing a clear description of the service area;

(c) A description of the grievance procedure to be utilized;

(d) A description of the quality assurance program, including:

(A) The formal organizational structure;

(B) The written criteria for selection, retention and removal of network providers; and

(C) The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(e) A list and description, by specialty, of the network providers;

(f) Copies of the written information proposed to be used by the issuer to comply with section (10) of this rule; and

(g) Any other information requested by the Director.

(7) A Medicare Select issuer:

(a) Shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the Director prior to implementing the changes. Changes shall be considered approved by the Director after 30 days unless specifically disapproved; and

(b) Shall file with the Director at least quarterly, an updated list of network providers.

(8) A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

(a) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(b) It is not reasonable to obtain services through a network provider.

(9) A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(10) A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(A) Other Medicare supplement policies or certificates offered by the issuer; and

(B) Other Medicare Select policies or certificates.

(b) A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers;

(c) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L;

(d) A description of coverage for emergency and urgently needed care and other out-of-service area coverage;

(e) A description of limitations on referrals to restricted network providers and to other providers;

(f) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer; and

(g) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

(11) Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to section (10) of this rule and that the applicant understands the restrictions of the Medicare Select policy or certificate.

(12) A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures. The following apply to grievance procedures:

(a) The grievance procedure shall be described in the policy and certificates and in the outline of coverage;

(b) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(c) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(d) If a grievance is found to be valid, corrective action shall be taken promptly.

(e) All concerned parties shall be notified about the results of a grievance.

(f) The issuer shall report no later than each March 31st to the Director regarding its grievance procedure. The report shall be in a format prescribed by the Director and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

(13) At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(14)(a) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer that has comparable or lesser benefits and that does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six months.

(b) For the purposes of this section, a Medicare supplement policy or certificate is considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subparagraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.

(15) Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this rule should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(a) Each Medicare Select issuer shall make available to each individual insurer under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer that has comparable or lesser benefits and that does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate is considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subparagraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.

(16) A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

Stat. Auth.: ORS 743.683

Stats. Implemented: ORS 743.010 & 743.683

Hist.: ID 9-1997, f. & cert. ef. 7-10-97; ID 10-2005, f. & cert. ef. 7-26-05

836-052-0142

Guaranteed Issue for Eligible Persons

(1) Guaranteed issue:

(a) Eligible persons are those individuals described in section (2) of this rule who seek to enroll under the policy during the period specified in section (3) of this rule and who submit evidence of the date of termination, disenrollment or Medicare Part D enrollment with the application for a Medicare supplement policy.

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(b) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in section (5) of this rule that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(2) Eligible persons. An eligible person is an individual described in any of the following paragraphs:

(a) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare, and the plan terminates or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual.

(b) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All Inclusive Care for the Elderly (PACE) provider under section 1894 of the Social Security Act, and there are circumstances similar to those described in this subsection that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a Medicare Advantage plan:

(A) The certification of the organization or plan has been terminated;

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

(D) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) The individual meets such other exceptional conditions as the Secretary may provide.

(c)(A) The individual is enrolled with:

(i) An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost);

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

(iv) An organization under a Medicare Select policy; and

(B) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under section (2)(b) of this rule.

(d) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(A)(i) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(ii) Of other involuntary termination of coverage or enrollment under the policy.

(B) The issuer of the policy substantially violated a material provision of the policy; or

(C) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual.

(e)(A) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar

organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act or a Medicare Select policy; and

(B) The subsequent enrollment under paragraph (A) of this subsection is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851 (e) of the federal Social Security Act); or

(f) The individual, upon first becoming enrolled for benefits under Medicare part A, enrolls in a Medicare Advantage plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan or program by not later than 12 months after the effective date of enrollment.

(g) The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in section (5)(d) of this rule.

(3) Guaranteed Issue Time Periods.

(a) In the case of an individual described in section (2)(a) of this rule, the guaranteed issue period begins on the later of:

(A) The date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation); or

(B) The date that the applicable coverage terminates or ceases; and ends 63 days thereafter.

(b) In the case of an individual described in section (2)(b), (c), (e) or (f) of this rule whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated;

(c) In the case of an individual described in section (2)(d)(A), the guaranteed issue period begins on the earlier of:

(A) The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any; and

(B) The date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated.

(d) In the case of an individual described in section (2)(b), (d)(B), (d)(C), (e) or (f) of this rule, who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date; and

(e) In the case of an individual described in section (2)(g) of this rule, the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the 60-day period immediately preceding the initial Part D enrollment period and ends on the date that is 63 days after the effective date of the individual's coverage under Medicare Part D; and

(f) In the case of an individual described in section (2) of this rule but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date.

(4) Extended Medigap access for interrupted trial periods.

(a) In the case of an individual described in section (2)(e) of this rule (or deemed to be so described, pursuant to this paragraph) whose enrollment with an organization or provider described in section (2)(e)(A) is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in section (2)(e) of this rule.

(b) In the case of an individual described in section (2)(f) of this section (or deemed to be so described, pursuant to this paragraph) whose enrollment with a plan or in a program described in section (2)(f) of this rule is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in section (2)(f) of this rule; and

(c) For purposes of sections (2)(e) and (f) of this rule, no enrollment of an individual with an organization or provider described in section (2)(e)(A) of this rule, or with a plan or in a program described in section (2)(f) of this rule, may be deemed to be an initial enrollment under this paragraph after the two year period beginning on the date on which the

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individual first enrolled with such an organization provider, plan or program.

(5) Products to which eligible persons are entitled. The Medicare supplement policy to which eligible persons are entitled under:

(a) Section (2)(a), (b), (c) (except for coverage described in (c)(iv)) and (d) of this rule is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K or L offered by any issuer;

(b) Section (2)(c)(iv) and (f) of this rule is any Medicare supplement policy described in OAR 836-052-0136 offered by any issuer;

(c)(A) Subject to paragraph (B) of this subsection, section (2)(e) of this rule is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in subsection (a) of this section.

(B) After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this paragraph is:

(i) The policy available from the same issuer but modified to remove prescription drug coverage; or

(ii) At the election of the policyholder, an A, B, C, F (including F with a high deductible), K or L policy that is offered by any issuer.

(d) Section (2)(g) of this rule is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K, or L, and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

(6) Notification provisions:

(a) At the time of an event described in section (2) of this rule because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of the individual's rights under this rule, and of the obligations of issuers of Medicare supplement policies under section (1) of this rule. Such notice shall be communicated contemporaneously with the notification of termination.

(b) At the time of an event described in section (2) of this rule because of which an individual ceases enrollment under a contract or agreement, policy or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the individual's rights under this rule, and of the obligations of issuers of Medicare supplement policies under section (1) of this rule. Such notice shall be communicated within ten working days of the issuer's receiving notification of disenrollment.

Stat. Auth.: ORS 743.684

Stats. Implemented: ORS 743.010 & 743.684

Hist.: ID 21-1998(Temp), f. 12-8-98, cert. ef. 1-1-99 thru 6-25-99; ID 4-1999, f. & cert. ef. 4-29-99; ID 6-2001, f. & cert. ef. 5-22-01; ID 24-2002, f. & cert. ef. 12-13-02; ID 10-2005, f. & cert. ef. 7-26-05

836-052-0145

Loss Ratio Standards and Refund or Credit of Premium

(1) The following provisions of this section establish loss ratio standards:

(a) A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return the applicable percentage specified in this section to the policyholder and certificate holder in the form of aggregate benefits, not including anticipated refunds or credits, provided under the policy form or certificate form:

(A) At least 75 percent of the aggregate amount of premiums earned, in the case of group policies; or

(B) At least 65 percent of the aggregate amount of premiums earned, in the case of individual policies.

(b) A percentage under subsection (a) of this subsection shall be calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a health maintenance organization shall not include:

(A) Home office and overhead costs;

(B) Advertising costs;

(C) Commissions and other acquisition costs;

(D) Taxes;

(E) Capital costs;

(F) Administrative costs; and

(G) Claims processing costs.

(c) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this rule when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards;

(d) For purposes of applying section (1)(a) of this rule and section (3)(c) of OAR 836-052-0151 only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies;

(e) For policies issued prior to September 1, 1993, expected claims in relation to premiums shall meet:

(A) The originally filed anticipated loss ratio when combined with the actual experience since inception;

(B) The appropriate loss ratio requirement from section (1)(a)(A) and (B) of this rule when combined with actual experience beginning with April 28, 1996, to date; and

(C) The appropriate loss ratio requirement from section (1)(a)(A) and (B) of this rule over the entire future period for which the rates are computed to provide coverage.

(2) The following provisions of this section apply to refund and credit calculations:

(a) An issuer shall collect and file with the Director by May 31 of each year the data contained in the applicable reporting form contained in Exhibit 1 to this rule for each type in a standard Medicare supplement benefit plan;

(b) If on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded;

(c) For the purpose of this rule, policies or certificates issued prior to September 1, 1993, the issuer shall make the refund or credit calculation separately for all individual policies, including all group policies subject to an individual loss ratio standard when issued, combined and all other group policies combined for experience after April 28, 1996. The first such report shall be due by May 31, 1998.

(d) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a negligible level. The refund must include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(3) An issuer of Medicare supplement policies and certificates issued before, on or after July 1, 1992, in this state shall file annually its rates, rating schedule and supporting documentation, including ratios of incurred losses to earned premiums by policy duration for approval by the Director in accordance with the filing requirements and procedures prescribed by the Director. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third year loss ratio that is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years. As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the Director for approval, in accordance with the applicable filing procedures of this state:

(a)(A) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. Supporting documents necessary to justify the adjustment shall accompany the filing;

(B) An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and to be

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expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment that would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date;

(C) If an issuer fails to make premium adjustments acceptable to the Director, the Director may order premium adjustments, refunds or premium credits that the Director considers necessary to achieve the loss ratio required by this rule.

(b) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(4) For purposes of this rule, experience of insureds who qualify for Medicare by reason of disability shall be combined with experience of insureds who qualify for Medicare by reason of age.

(5) The Director may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before, on or after July 1, 1992, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance may be made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished as the Director determines to be appropriate.

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

Stat. Auth.: ORS 743.684

Stats. Implemented: ORS 743.010 & 743.684

Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 5-1996, f. & cert. ef. 4-26-96; ID 9-1997, f. & cert. ef. 7-10-97; ID 8-2001(Temp), 6-15-01, cert. ef. 6-18-01 thru 12-10-01; ID 11-2001, f. & cert. ef. 9-24-01; ID 10-2005, f. & cert. ef. 7-26-05

836-052-0151

Filing and Approval of Policies and Certificates and Premium Rates

(1) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the Director in accordance with filing requirements and procedures prescribed by the Director.

(2) An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the Insurance Commissioner in the state in which the policy or certificate was issued.

(3) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with an approved by the Director in accordance with filing requirements and procedures prescribed by the Director.

(4) Except as provided in this section, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan. For the purposes of this section, a "type" means an individual policy or a group policy. An issuer may offer, with the approval of the Director, not more than four additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

- (a) The inclusion of new or innovative benefits;
- (b) The addition of either direct response or agent marketing methods;
- (c) The addition of either guaranteed issue or underwritten coverage.

(5) The following applies to continuance and discontinuance of Medicare supplement policies and certificates:

(a) Except as provided in this subsection, an issuer shall continue to make available for purchase any policy form or certificate form issued after July 1, 1992, that has been approved by the Director. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve months. The following applies to discontinuance of a policy form or certificate form to which this subsection applies:

(A) An issuer may discontinue the availability of a policy form or certificate form for new issues if the issuer provides to the Director in writing its decision at least 30 days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the Director, the issuer shall no longer offer for sale the policy form or certificate form in this state. The issuer must continue to renew outstanding policies and certificates;

(B) An issuer that discontinues the availability of a policy form or certificate form pursuant to paragraph (A) of this subsection shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the Director of the discontinuance. The period of discontinuance may be reduced if the Director determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection;

(c) A change in the rating structure or methodology shall be considered a discontinuance under subsection (a) of this section unless the issuer complies with the following requirements:

(A) The issuer provides an actuarial memorandum satisfactory to the Director, in a form and manner prescribed by the Director, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates;

(B) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The Director may approve a change to the differential that is in the public interest.

(6) Except as provided in this section, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in OAR 836-052-0145. Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

Stat. Auth.: ORS 743.683

Stats. Implemented: ORS 743.010, 743.684(1) - 743.684(2) & 743.683(2)

Hist.: ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 2-1995, f. & cert. ef. 4-26-95; ID 10-2005, f. & cert. ef. 7-26-05

836-052-0160

Required Disclosure Provisions

(1) The following provisions apply to all Medicare supplement policies and certificates:

(a) Each Medicare supplement policy and certificate shall include a renewal or continuation provision. The language or specifications of the provision must be consistent with the type of contract issued. The provision shall be appropriately captioned, shall appear on the first page of the policy and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's or certificate holder's age;

(b) Each rider or endorsement added to a Medicare supplement policy after the date that the policy is issued or at reinstatement or renewal, that reduces or eliminates benefits or coverage in the policy, shall require a signed acceptance by the insured, except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits. After the date of issuance of the policy or certificate, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. When a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy;

(c) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import;

(d) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations";

(e) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificate holder may return the policy or certificate within 30 days of its delivery and may have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason;

(f)(A) An issuer of health policies or certificates that provide hospital or medical expense coverage on an expense incurred or indemnity basis to a person eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by

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the National Association of Insurance Commissioners and CMS and in a type size no smaller than 12 point type. Delivery of the Guide shall be made whether or not such policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in OAR 836-052-0119. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application, and acknowledgment of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered.

(B) For the purposes of this rule, "form" means the language, format, type size, type proportional spacing, bold character and line spacing.

(2) The following notice requirements apply to all insurers providing Medicare supplement insurance:

(a) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit change, an issuer shall notify its policyholders and certificate holders of modification it has made to Medicare supplement insurance policies or certificates. The notice must be made in a format acceptable to the Director. The notice shall:

(A) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and

(B) Inform each policyholder or certificate holder as to when any premium adjustment is to be made due to changes in Medicare.

(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension;

(c) Notices under this rule shall not contain or be accompanied by any solicitation.

(3) MMA Notice Requirements. Issuers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

(4) Each issuer shall provide an outline of coverage for Medicare supplement policies as follows:

(a) An issuer shall provide an outline of coverage to each applicant at the time the sales presentation is made to the prospective applicant and, except for direct response policies, shall obtain an acknowledgment of receipt of the outline of coverage from the applicant;

(b) If an outline of coverage provided at the time of the sales presentation and the Medicare supplement policy or certificate is issued on a basis that would require revision of the outline of coverage, a substitute outline of coverage properly describing the policy or certificate must accompany the policy or certificate when it is delivered. The revised outline of coverage shall contain the following statement, or similar language approved by the Director, in not less than twelve point type, immediately above the insurer's name: "Notice: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued";

(c) The outline of coverage provided to applicants pursuant to this section consists of four parts; a cover page, premium information, disclosure pages and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed in Exhibit 1;

(d) The outline of coverage may be designated by the insurer either as an outline of coverage or as a fact sheet.

(5) An issuer shall give notice regarding policies or certificates that are not Medicare supplement policies, as follows:

(a) Any health insurance policy, other than a Medicare supplement policy, a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.); any disability income policy or other policy identified in OAR 836-052-0114(4), issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate;

(b) The notice under subsection (a) of this section shall be printed on or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy or certificate delivered to insureds. The notice shall be in no less than 12 point type and shall contain the following language: "THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company";

(c) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in section (4)(a) of this rule shall disclose, using the applicable standard statement in Appendix C,

the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as part of, or together with, the application for the policy or certificate.

[ED. NOTE: Exhibits and Appendices referenced are available from the agency.]

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

Stat. Auth.: ORS 731.244, 743.683 & 743.685

Stats. Implemented: ORS 743.683, 743.685 & 743.686

Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 5-1996, f. & cert. ef. 4-26-96; ID 9-1997, f. & cert. ef. 7-10-97; ID 21-1998(Temp), f. 12-8-98, cert. ef. 1-1-99 thru 6-25-99; ID 4-1999, f. & cert. ef. 4-29-99; ID 6-2001, f. & cert. ef. 5-22-01; ID 8-2001(Temp), f. 6-15-01, cert. ef. 6-18-01 thru 12-10-01; ID 11-2001, f. & cert. ef. 9-24-01; ID 10-2005, f. & cert. ef. 7-26-05

836-052-0165

Requirements for Application Forms, Replacement Coverage

(1) Application forms shall include the statements and questions set forth in this section designed to elicit information as to whether, as of the date of the application, the applicant currently has Medicare supplement, Medicare Advantage, Medicaid coverage or another health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other health insurance policy or certificate currently in force. A supplementary application or other form to be signed by the applicant and agent containing such statements and questions may be used. The statements and questions are as follows:

(a) Statements:

(A) You do not need more than one Medicare supplement policy.

(B) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(C) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(D) If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within 90 days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(E) If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated, if requested within 90 days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(F) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a qualified Medicare beneficiary (QMB) and a specified low income Medicare beneficiary (SLMB).

(b) Questions.

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS.

Please mark Yes or No below with an "X"

To the best of your knowledge,

(1)(a) Did you turn age 65 in the last six months?

Yes _____ No _____

(b) Did you enroll in Medicare Part B in the last six months?

Yes _____ No _____

(c) If yes, what is the effective date? _____

(2) Are you covered for medical assistance through the state Medicaid program?

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(NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost," please answer NO to this question.)

Yes _____ No _____

If yes,

(a) Will Medicaid pay your premiums for this Medicare supplement policy?

Yes _____ No _____

(b) Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?

Yes _____ No _____

(3)(a) If you had coverage from any Medicare plan other than original Medicare within the past 63 days (for example, a Medicare Advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

START ___/___/___ END ___/___/___

(b) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

Yes _____ No _____

(c) Was this your first time in this type of Medicare plan?

Yes _____ No _____

(d) Did you drop a Medicare supplement policy to enroll in the Medicare plan?

Yes _____ No _____

(4)(a) Do you have another Medicare supplement policy in force?

Yes _____ No _____

(b) If so, with what company, and what plan do you have (optional for Direct Mailers)?

(c) If so, do you intend to replace your current Medicare supplement policy with this policy?

Yes _____ No _____

(5) Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union, or individual plan)

Yes _____ No _____

(a) If so, with what company and what kind of policy?

Stats. Implemented: ORS 743.010(1)(c), 743.010(2), 743.683(2) & 743.685(8)

Hist.: ID 1-1990, f. 1-10-90, cert. ef. 4-1-90, ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 10-2005, f. & cert. ef. 7-26-05

Department of Corrections Chapter 291

Adm. Order No.: DOC 9-2005

Filed with Sec. of State: 7-22-2005

Certified to be Effective: 7-24-05

Notice Publication Date: 10-1-04

Rules Adopted: 291-105-0081

Rules Amended: 291-105-0005, 291-105-0010, 291-105-0015, 291-105-0021, 291-105-0026, 291-105-0028, 291-105-0031, 291-105-0036, 291-105-0041, 291-105-0046, 291-105-0058, 291-105-0066, 291-105-0069, 291-105-0072, 291-105-0100

Rules Ren. & Amended: 291-105-0073 to 291-105-0085

Subject: These amendments are necessary to update the standardized process for handling inmate misconduct in Department of Corrections facilities, and to reflect operational and organizational changes that have occurred in the department since the previous amendments.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-105-0005

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 179.040, 421.068, 421.180, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to define the rules of conduct governing inmates and outline the procedures to be followed in processing disciplinary action(s).

(3) Policy:

(a) It is the policy of the Department of Corrections to hold inmates accountable for misconduct while incarcerated, and to promote and reinforce pro-social behavior by inmates, through a system of disciplinary rules and procedures that embrace the Oregon Accountability Model.

(b) Inmates in Department of Corrections facilities shall be disciplined for violation of specified rules of prohibited inmate conduct in accordance with the procedures set forth in these rules. The primary objectives of these rules are:

(A) To provide for the safe, secure, efficient, and orderly management of Department of Corrections facilities, specifically including the safety and security of department employees, inmates, and property of the Department of Corrections;

(B) To establish norms of acceptable inmate conduct, and consistent and fair procedures for the processing of inmate misconduct reports and the imposition of disciplinary sanctions, which are understood by both employees and inmates alike;

(C) To establish a comprehensive range of appropriate disciplinary sanctions for violation of the rules of prohibited inmate conduct; and

(D) To provide a consistent departmental response to like types of misconduct committed by inmates with similar misconduct histories.

(c) To promote these objectives, the rules define appropriate disciplinary sanctions for each rule violation on a disciplinary sanction grid. Inmates found in violation of the rules of prohibited inmate conduct are disciplined in accordance with the sanction grid, subject to deviation upon order of the hearings officer, functional unit manager, or his/her designee for substantial reasons.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Hist.: CD 7-1979, f. & ef. 3-14-79; CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0010

Definitions

(1) Adjudicator: The assigned employee within the facility responsible for the disposition of all informal hearings and minor misconduct reports that are to be adjudicated without a formal hearing.

(2) Attempt: Conduct which constitutes a substantial step towards the commission of a rule violation.

(3) Calendar Day: All weekdays, weekends, and holidays.

836-052-0180

Appropriateness of Recommended Purchase and Excessive Insurance

(1) In recommending the purchase or replacement of any Medicare supplement policy or certificate, an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(2) Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

(3) An issuer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

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

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(4) Conduct Order: Oregon Department of Corrections form CD 708, that allows restriction of an inmate's privileges for no more than eight hours, without the need of a major or minor misconduct report disciplinary hearing, for cited rule violations, in accordance with OAR 291-105-0021(1).

(5) Conspiracy: An agreement between an inmate and one or more persons to engage in, cause, or conceal a rule violation.

(6) Contraband: Any article or thing which an inmate is prohibited by statute, rule or order from obtaining, possessing, or which the inmate is not specifically authorized to obtain or possess or which the inmate alters without authorization.

(7) Controlled Substance: A drug or its precursor as listed in ORS 475.005 through 475.999.

(8) Dangerous/Deadly Weapon: Any instrument, article or substance which is readily capable of causing death or a serious physical injury.

(9) Deadly Force: Physical force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.

(10) Department of Corrections (DOC) Employee: Any person who is full-time, part-time, or under temporary employment by the Department of Corrections; any person under contractual arrangement to provide services to the department; any person employed by private or public sector agencies who is serving under department-sanctioned special assignment to provide services and/or support to department programs within any Department of Corrections facility. Any person, as described above, assigned to work for a residential or extended care Corrections Treatment Program.

(11) Department of Corrections Facility: Any institution, facility, or staff office, including the grounds, operated by the Department of Corrections.

(12) Disciplinary Misconduct System (DMS): The program within the department's computer system that is used to generate, record or monitor inmate disciplinary actions.

(13) Distribution: The transfer of contraband from one person to another (Distribution includes smuggling.)

(14) Drugs: Any controlled substance.

(15) Escape Device: Any item specifically designed for, physically altered for, or readily capable of being used to facilitate an escape from a Department of Corrections facility, or from custody.

(16) Explosive: A substance which, when subjected to a suitable initiating impulse, undergoes a chemical change characterized by the liberation of heat in the formation of products which are mainly gaseous.

(17) Fine: A monetary sanction imposed in accordance with the Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions. Inmate fines shall be deposited in the Department of Corrections Inmate Welfare Fund as confiscated funds.

(18) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of services or coordination of programs.

(19) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, an assistant director, or an administrator and has responsibility for the delivery of program services or coordination of program operations.

(20) Harassment — Racial, Religious or Sexual: Directing offensive language or gestures toward or about another person or group or subjecting another to physical contact because of the other person's or group's race, sex, color, religion, national origin, age, marital status or disability.

(21) Hearings Officer: An employee of the Inspections Division assigned to review and dispose of major, and certain minor, misconduct reports through formal hearing.

(22) Hostage: A person held as security in order to obtain demands.

(23) Inmate: Any person under the supervision of the Department of Corrections, who is not on parole, post-prison supervision, or probation status.

(24) Intoxicants: Any substance, including but not limited to unauthorized medication and alcoholic beverages, which causes a disturbance of mental or physical capacity resulting from the introduction of the substance in the body. Intoxicants do not include controlled substances.

(25) Lesser Included Violation: Any violation which is a lesser degree of the charged violation (for example, Assault III is a lesser included violation of Assault I or Assault II. Contraband III is a lesser included violation of Contraband I or II, etc.)

(26) Local Jail: Any city or county lock-up or local correctional facility.

(27) Officer-in-Charge: That person designated by the functional unit manager to supervise the facility and make operational decisions in accordance with policy, rule or procedure during periods when the functional unit manager or officer-of-the-day are not readily available.

(28) Order: Any direction given to an inmate that directs or forbids the doing of some act over which the inmate has control. An order may be written, verbal or gestured communication (including all Department of Corrections functional unit rules and procedures; all federal, state and local laws; and court ordered terms and conditions).

(29) 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.

(30) Oregon Corrections Enterprises (OCE) Employee: Any person employed full-time, part-time, or under temporary appointment by the Oregon Corrections Enterprises. For the purposes of this rule only, employee shall also include any person under contractual arrangement to provide services to the agency; any person employed by private or public sector agencies who is serving under agency-sanctioned special assignment to provide services or support to agency programs.

(31) Physical Force: The use of hands, other parts of the body, objects, instruments, chemical devices, electronic devices, firearms or other physical methods used to restrain, subdue, control, intimidate or to compel persons to act in a particular way or to stop acting a particular way.

(32) Physical Injury: Impairment of physical condition or substantial pain.

(33) Possession: To have physical possession of or otherwise exercise control over property.

(34) Security Device: Any fixture, device or tool, the purpose of which is to assist with safety or security.

(35) Security Threat Group (STG): Any group of two or more individuals who:

(a) Have a common name, identifying symbol, or characteristic which serves to distinguish themselves from others.

(b) Have members, affiliates, and/or associates who individually or collectively engage, or have engaged, in a pattern of illicit activity or acts of misconduct that violates Oregon Department of Corrections rules.

(c) Have the potential to act in concert to present a threat, or potential threat, to staff, public, visitors, inmates, offenders or the secure and orderly operation of the institution.

(36) Serious Physical Injury: Injury that creates a substantial risk of death, causes serious and protracted disfigurement, impairment of health, loss or impairment of any bodily organ function, or death.

(37) Sexual Activity: Sexual contact including, but not limited to, sexual intercourse, deviate sexual intercourse, kissing, fondling, and/or manipulation of the genitalia, buttocks, and breasts of another person, or of oneself, in a manner that produces or is intended to produce sexual stimulation or gratification.

(38) Short-Term Transitional Leave: A leave for a period not to exceed 30 days preceding an established discharge date and/or parole release date which allows an inmate opportunity to secure appropriate transitional support when necessary for successful reintegration into the community.

(39) Temporary Segregation Status: Placement in a disciplinary segregation unit or local jail pending disciplinary hearing.

(40) Working Day: Monday through Friday, excluding weekends and holidays.

(41) Working File: Those documents maintained in a Department of Corrections facility or community corrections office for administrative and case management purposes.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Hist.: CD 7-1979, f. & ef. 3-14-79; CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0015

Rules of Misconduct

(1) Violations Involving Property

(a) Arson: An inmate commits arson if he/she starts an unauthorized fire or causes an explosion.

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(b) **Property I:** An inmate commits Property I when he/she, except as authorized by a DOC or OCE employee, destroys, abuses, alters, damages, defaces, misuses, tampers with, or wastes materials or property, or fails to properly protect or produce property issued to him/her in a timely manner and:

- (A) The property involved exceeds \$75 in value; or
- (B) The misconduct involves the functioning of a security device; or
- (C) The misconduct involves a threat to the safety, security or orderly operation of the facility.

(c) **Property II (minor violation):** An inmate commits Property II when he/she, except as authorized by a DOC or OCE employee, destroys, alters, abuses, damages, defaces, misuses, tampers with or wastes materials or property or fails to properly protect or produce property issued to him/her in a timely manner.

(d) **Contraband I:** An inmate commits Contraband I if:

- (A) He/she possesses any controlled substance; or
- (B) He/she possesses any intoxicant; or
- (C) He/she possesses any drug paraphernalia; or
- (D) He/she has any controlled substance or intoxicant in his/her urine or blood; or

(E) He/she fails to provide, refuses to submit, or submits an unacceptable urine sample for testing; or

(F) He/she alters, taints, substitutes, contaminates or destroys a urine sample; or

(G) He/she possesses money in excess of \$1.

(c) **Contraband II:** An inmate commits Contraband II if he/she possesses contraband other than that listed in Contraband I (OAR 291-105-0015(d)(A-G)) and Contraband III (OAR 291-105-0015(f)) that creates a threat to the safety, security or orderly operation of the facility, including but not limited to:

(A) Razor blades, checks, tobacco or smoking paraphernalia, tattoo equipment or paraphernalia, unauthorized medication (except self-medication which has expired) and items of barter, such as jewelry or canteen items not purchased by him or her); or

(B) Contraband that was obtained by threats of or actual violence or obtained by theft (including services), forgery, or coercion.

(f) **Contraband III (minor violation):** An inmate commits Contraband III if he/she possesses contraband other than that listed on Contraband I (OAR 291-105-0015(d)(A-G) and Contraband II (OAR 291-105-0015(e)(A-B)), including money in an amount of \$1 or less, uncanceled stamps, self-medication which has expired, legal material belonging to another inmate, or property in excess of that authorized by staff members.

(g) **Unauthorized Use of Information Systems I:** An inmate commits Unauthorized Use of Information Systems I if he/she operates or uses any DOC or OCE or unauthorized information system equipment including, but not limited to, terminals, personal computers, minicomputers, work stations, controllers, printers, copiers, fax machines and/or phones that exceeds the conditions of use or access granted by the Director/designee or functional unit manager/designee, as appropriate, in the following manner:

(A) To send, receive, or read messages or e-mails; access the Internet, and/or access the AS400, DOC servers or network devices, programs, other unauthorized computer programs, etc;

(B) To conduct illegitimate business activity; or

(C) To do unauthorized legal work.

(h) **Unauthorized Use of Information Systems II:** An inmate commits Unauthorized Use of Information Systems II if he/she operates or uses any DOC, OCE or unauthorized information system equipment including, but not limited to, terminals, personal computers, copiers, fax machines, and/or phones that exceeds the conditions of use or access granted by the Director/designee or functional unit manager/designee, as appropriate, in the following manner:

(A) To prepare a letter or other unauthorized document;

(B) To make copies for personal use (e.g., photos, greeting cards, pictures, newspaper articles); or

(C) To use the phone in excess of or outside the parameters permitted under the department's rules.

(2) **Violations Against Persons:**

(a) **Assault I:** An inmate commits Assault I if:

(A) He/she causes physical injury to a DOC or OCE employee, visitor or volunteer; or

(B) He/she causes bodily fluids to come in contact with a DOC or OCE employee, visitor or volunteer, including feces, urine, spit, semen and blood; or

(C) He/she causes serious physical injury to another person other than a DOC or OCE employee, visitor or volunteer; or

(D) He/she causes physical injury to another person and uses a dangerous/deadly weapon; or

(E) He/she commits a unilateral attack in a location or under circumstances which creates a threat to the safety, security, or orderly operation of the facility, such as the dining hall or the recreation area; or

(F) He/she refuses to stop his/her assaultive behavior after being ordered to do so and which necessitates a DOC or OCE staff member(s) to use physical force to stop the assaultive behavior.

(b) **Assault II:** An inmate commits Assault II if:

(A) He/she causes bodily fluids to come in contact with another inmate, including feces, urine, spit, semen and blood; or

(B) He/she commits a unilateral attack and causes physical injury to another person; or

(C) He/she is involved in a mutual fight in a location or under circumstances which creates a threat to the safety, security, or orderly operation of the facility, such as a dining hall or recreation area; or

(D) He/she harms or endangers the well being of an animal used to conduct DOC affairs.

(c) **Assault III:** An inmate commits Assault III if he/she commits a unilateral attack or is involved in a mutual fight.

(d) **Disrespect I:** An inmate commits Disrespect I if he/she directs hostile, sexual, abusive or threatening language or gestures, verbal or written, towards or about another person involving harassment — racial, religious or sexual or a physical threat to the other person.

(e) **Disrespect II:** An inmate commits Disrespect II if he/she directs hostile, sexual, abusive or threatening language or gestures, verbal or written, towards or about another person the expression of which or under circumstances which create a threat to the safety, security or orderly operation of the facility (including, but not limited to, when one or more other persons are present, or in a location such as a dining hall or recreation yard).

(f) **Disrespect III (minor violation):** An inmate commits Disrespect III when he/she directs hostile, sexual, abusive or threatening language or gestures, verbal or written, towards or about another person.

(g) **Extortion I:** An inmate commits Extortion I if he/she compels or induces a DOC or OCE employee or any other person who is not an inmate to act or refrain from acting by threats, force or intimidation. (Extortion includes the use of threats, force or intimidation to collect gambling and other types of debt.)

(h) **Extortion II:** An inmate commits Extortion II if he/she compels or induces an inmate to act or refrain from acting by threats, force or intimidation. (Extortion includes the use of threats, force or intimidation to collect gambling and other types of debt.)

(i) **Sexual Assault:** An inmate commits Sexual Assault if he/she engages in non-consensual sexual activity with another person, or when force is used or when the person is unable to consent because of age or incapacitation (mental defect, mental incapacitation or physical helplessness).

(j) **Sexual Coercion:** An inmate commits Sexual Coercion if he/she compels or induces another person to engage in sexual activity by deceit, threats, force or intimidation or for personal favors.

(k) **Non-assaultive Sexual Activity:** An inmate commits Non-assaultive Sexual Activity if he/she engages in sexual activity which produces or is intended to produce sexual stimulation or gratification, in the presence of another person and the sexual activity is conducted without violence, threat of violence, coercion, or use of a weapon.

(l) **Sexual Solicitation:** An inmate commits Sexual Solicitation if he/she solicits another person to engage in sexual activity.

(m) **Hostage Taking:** An inmate commits Hostage Taking if he/she interferes with another person's personal liberty by taking him/her hostage.

(n) **Body Modification:** An inmate commits body modification if he/she alters, allows to be altered or perpetuates a previous alteration of his/her body by tattooing, piercing, puncturing, scarring, etc.

(3) **Violations Involving Fraud or Deception**

(a) **Bribery:** An inmate commits bribery if he/she confers, or offers or agrees to confer any benefit upon another person, which may influence a DOC or OCE employee's judgment, action or decision, or a DOC or OCE employee's exercise of discretion in an official capacity, or during the course of an employee's employment.

(b) **False Information to Employees I:** An inmate commits False Information to Employees I if he/she presents or causes the presentation of false or misleading information to a DOC or OCE employee which creates a threat to the safety, security or orderly operation of the facility. False or misleading information shall include gestures, verbal and/or written communication.

(c) **False Information to Employees II (minor violation):** An inmate commits False Information to Employees II when he/she presents or caus-

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es the presentation of false and misleading information to DOC or OCE employees. False or misleading information includes gestures, verbal and/or written communication.

(d) Forgery: An inmate commits Forgery if he/she falsely makes, completes, alters or presents a written instrument.

(e) Gambling (minor violation): An inmate commits Gambling when he/she wagers anything of value in games of chance, or an inmate possesses paraphernalia associated with gambling or possesses the proceeds of gambling activity, money or otherwise.

(f) Fraud: An inmate commits fraud if he/she deceives another person or business in order to obtain money, property or something of monetary value.

(4) Violations Against the Orderly Operation of the Department/Facility, Including Weapons and Escape Devices

(a) Disobedience of an Order I: An inmate commits Disobedience of an Order I if he/she overtly refuses to promptly, or in a timely manner, comply with a valid order, which creates a threat to the safety, security, or orderly operation of the facility (such as when one or more other persons are present).

(b) Disobedience of an Order II: An inmate commits Disobedience of an Order II if:

(A) He/she overtly refuses to follow a valid order; or

(B) He/she fails to comply with a valid order, which creates a threat to the safety, security or orderly operation of the facility (such as when one or more other persons are present).

(c) Disobedience of an Order III (minor violation): An inmate commits Disobedience of an Order III when he/she fails to comply with a valid order.

(d) Disturbance: An inmate commits a Disturbance if he/she advocates, creates, engages in, maintains or promotes an unreasonably annoying condition or disorder, characterized by unruly, noisy, or violent conduct or unauthorized group activity, which disrupts the orderly administration of or poses a direct threat to the security of a facility, facility programs or the safety of DOC or OCE employees or other persons.

(e) Distribution I: An inmate commits Distribution I if he/she distributes or has distributed to him/her any controlled substance or intoxicant, or he/she manufactures a controlled substance.

(f) Distribution II: An inmate commits Distribution II if he/she distributes, has distributed to him/her or manufactures contraband that creates a threat to the safety, security and orderly operation of the facility.

(g) Employee/Inmate - Relationships: An inmate commits a prohibited Employee/Inmate Relationship when he/she knowingly engages in any personal or business transactions, either directly or through his/her family or friends, with an employee or volunteer of the Department of Corrections or Oregon Corrections Enterprises or their families, except as authorized in advance by the employee's job description or functional unit manager.

(h) Escape: An inmate commits Escape if he/she departs without authorization from:

(A) Within the security perimeter of a facility;

(B) The immediate control of DOC or OCE staff while outside the facility security perimeter;

(C) The grounds of a minimum security facility without a security perimeter; or

(D) The direct supervision of non-Departmental personnel authorized to supervise inmates while outside the facility security perimeter.

(i) Unauthorized Departure: An inmate commits Unauthorized Departure if he/she departs without authorization while on temporary release or transitional leave from a facility and not under direct supervision.

(j) Possession of a Dangerous/Deadly Weapon or an Escape Device: An inmate commits Possession of a Dangerous/Deadly Weapon or an Escape Device when he/she possesses:

(A) A weapon as defined in OAR 291-105-0010(8); or

(B) An escape device as defined in OAR 291-105-0010(15).

(k) Racketeering: Benefiting from, engaging in, or conducting an operation to make money illegitimately or to deprive another person or business of money, property or service(s).

(l) Unauthorized Area I: An inmate commits Unauthorized Area I when he/she fails to be present or is in any location not designated by assignment, programmed activity, call out or staff directive that creates a threat to the safety, security or orderly operation of the facility.

(m) Unauthorized Area II (minor violation): An inmate commits Unauthorized Area II when he/she fails to be present or is in any location not designated by assignment, programmed activity, call out or staff directive.

(n) Unauthorized Organization I: An inmate commits Unauthorized Organization I if, except as specified by Department of Corrections rule on Group Activities (Inmate) (OAR 291-145) or by the institution security threat group manager, he/she creates or actively promotes, recruits, or participates in any club, association or organization which is a security threat group.

(o) Unauthorized Organization II: An inmate commits Unauthorized Organization II if, except as specified by Department of Corrections rule on Group Activities (Inmate) (OAR 291-145) or by the institution security threat group manager, he/she supports, displays, or endorses through verbal, visual or written communication, any club, association or organization which is a security threat group or engages in a petition drive without specific authorization from the functional unit manager.

(p) Unauthorized Organization III (minor violation): An inmate commits Unauthorized Organization III if, except as specified by Department of Corrections rule on Group Activities (Inmate) (OAR 291-145) or by the functional unit manager, he/she creates, promotes, or participates in any club, association or organization.

(5) Attempt and Conspiracy: An inmate who attempts or conspires to commit a violation of a rule(s) of prohibited conduct shall be found in violation of the rule(s), and shall be subject to appropriate sanction(s) on the same basis as if the inmate had committed a completed violation(s). (See definitions for attempt and conspiracy.)

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Hist.: CD 8(Temp)/CD 11(Temp)/CD 12(Temp), f. & ef. 10-20-72 thru 2-16-73; CD 33, f. 16-76, ef. 7-1-76; CD 34(Temp), f. & ef. 7-19-76; CD 36, f. 11-5-76, ef. 11-15-76; CD 7-1979, f. & ef. 3-14-79; CD 19-1979(Temp), f. & ef. 10-19-79; Renumbered from 291-040-0050; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-14-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0021

Procedures for Handling Misconduct by Inmates

(1) Corrective Action: DOC or OCE employees shall be expected to use less than formalized procedures if the act(s) of misconduct do not constitute a threat to life, health, facility security or good order, employee authority or property and in a manner that promotes and embraces the Oregon Accountability Model. Corrective action may include: reprimand, warning and counseling, and as authorized by the functional unit manager, loss of leisure activities conduct order (CD 708) for no more than eight hours. The officer-in-charge or designee shall review and approve or disapprove all employee recommendations for loss of leisure time activities

(2) Misconduct Reports:

(a) When the misconduct justifies submission of a misconduct report, the DOC or OCE employee shall file a misconduct report with an immediate supervisor or the officer-in-charge no later than 24 hours AFTER sufficient evidence is gathered, discovered, and/or observed to support a charge of violation of rules. Determination of the sufficiency of evidence shall be a matter of judgment for the employee submitting the report and the immediate supervisor reviewing the report.

(b) The reviewing supervisor will ensure the report is accurate, appropriate and supported by sufficient information. The supervisor will then sign the report. The reviewing supervisor or designee shall be responsible for providing the inmate with a copy of the misconduct report, rules of prohibited conduct, and the notice of hearing and inmate rights within 24 hours of the filing of the report unless the inmate is unavailable to be served.

(c) The hearing may be held within 24 hours with the inmate's consent.

(d) The misconduct report shall be submitted on a Department of Corrections form, and shall be as specific and comprehensive as possible. The misconduct report shall include a description of any unusual relevant inmate behavior and information regarding how the employee became aware of the behavior. The misconduct report must contain sufficient and complete facts to support the alleged rule violation(s), including a description of what the restitution is for and the amount of restitution to be ordered, if it is possible to determine.

(e) The misconduct report must specifically allege all the major or minor rule violations the inmate is alleged to have violated, and demonstrate conduct constituting an attempt or conspiracy. Neither the hearings officer nor the adjudicator may add or change any violations. The hearings officer may find the inmate in violation of lesser included violations.

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(f) Reports from DOC or OCE employee witnesses shall also be submitted.

(g) When the alleged misconduct occurs while the inmate is in the temporary physical custody of a jurisdiction other than the Department of Corrections, employees from that jurisdiction may provide a written description of the misconduct to department employees. On review of such written information, the officer-in-charge at the facility receiving the inmate back into the physical custody of the department may determine that the described action violates a rule(s) of prohibited inmate conduct and direct that a misconduct report be submitted. The written description provided by the temporary custody jurisdiction shall accompany the misconduct report. A misconduct report shall not be submitted absent a written description of the allegation from the temporary physical custody jurisdiction.

(3) Temporary Placement in Disciplinary Segregation Status: An inmate charged with committing a rule violation may be placed in temporary disciplinary segregation status pending resolution of the charge. This action will be taken when the functional unit manager or the officer-in-charge determines that the alleged rule violation charged is of such seriousness that the good order and security of the facility requires immediate removal of the inmate from the general population, or it is determined the inmate is a threat to the community or is likely to escape or abscond.

(a) If temporary disciplinary segregation status is ordered, the officer-in-charge must complete the portion of the Department of Corrections misconduct report specifying the reason(s) why immediate temporary disciplinary segregation of the inmate was deemed necessary.

(b) A completed copy of the Department of Corrections misconduct report will be forwarded to the functional unit manager or designee who will review the inmate's pre-hearing detention status within 72 hours of the inmate's placement in temporary disciplinary segregation status. If approved, the functional unit manager or designee will initial the report. If the inmate is temporarily confined in a local jail while on short-term transitional leave or emergency leave, the functional unit manager or designee will be notified for review of the inmate's status, within 72 hours of the inmate's confinement.

(4) Scheduling a Hearing:

(a) An inmate charged with a rule violation shall be scheduled for a hearing as soon as practicable, but not necessarily opened or heard, no later than five working days after the inmate has received his/her copy of the misconduct report. The hearing may be postponed or continued for a reasonable period for good cause as provided in OAR 291-105-0064. The reason(s) for the postponement or continuance shall be made part of the record.

(b) A hearing shall be initiated within seven calendar days (including Saturdays, Sundays, and legal holidays) if the inmate is placed in temporary segregation status.

(c) A hearing shall be initiated within ten working days of the date of the inmate's return to the facility or receipt of the misconduct report by the facility following the inmate's return, if the inmate was under supervision of Community Corrections staff while on short-term transitional leave, emergency leave, or a supervised trip and is alleged to have committed a rule violation(s).

(d) If the inmate is transferred to another Department of Corrections facility, a hearing shall be initiated within ten working days.

(e) When an inmate charged with a level I or level II rule violation is released from custody prior to a hearing being held, a hearing will be scheduled as soon as practicable upon his/her return to DOC custody.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075
Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0026

Hearings Officers Responsibilities

(1) Unless waived by the inmate, a formal hearing shall be conducted by the hearings officer on all misconduct reports classified by the adjudicator as charging a major rule violation(s), and included minor violation(s), and on all misconduct reports charging a minor rule violation(s) for which an inmate requests a formal hearing.

(2) Prior to the formal hearing, the hearings officer shall review the misconduct report alleging major rule violation and, if there is no prima facie case for a major rule violation, dismiss the major violations and refer

the minor violations back to the adjudicator for an informal hearing. The hearings officer may substitute minor violations as lesser included violations.

(3) The hearings officer shall not have been a witness to the event, have personal knowledge of any material, disputed fact relating to the case or have participated in the case as a charging or investigating officer.

(4) The hearings officer will conduct the hearing and shall decide, based upon the evidence, whether the inmate has violated the rule(s) as charged in the misconduct report. The hearings officer may not add or change the violation(s) in the misconduct report. The hearings officer may find a violation of a lesser included violation (see Definitions).

(5) The hearings officer may dismiss the alleged rule violation(s) at any stage of the proceedings, with or without prejudice, stating in writing the reason for the dismissal. An alleged rule violation(s) dismissed without prejudice may be resubmitted in another misconduct report in accordance with OAR 291-105-0021(2).

(6) The hearings officer or other Hearings Unit employees as requested by the hearings officer shall report disciplinary actions which involve security threat group activity to the facility's security threat group manager.

(7) Counseling and Treatment Services (CTS) staff will be notified when inmates with either mental health or developmental disability issues are placed in disciplinary segregation and/or are scheduled for a disciplinary hearing.

(a) CTS staff will then determine whether an evaluation shall be submitted to the hearings staff in the institution housing the inmate.

(b) If an evaluation is to be provided, CTS staff will contact hearings staff within two working days of receiving notification and advise them that an evaluation will be submitted for consideration at the hearing. CTS staff will include the timeline for submission of the evaluation.

(c) The hearings officer will postpone the hearing if necessary, to ensure that such an evaluation is considered in the case at issue.

(8) The mental health evaluation shall address the following:

(a) Did the inmate's mental health status contribute to the alleged violation(s)?

(b) Is the inmate able to understand the charges and the hearings process?

(c) From a mental health standpoint, should sanctions be modified or are sanctions for the alleged misconduct contraindicated?

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075
Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1987, f. & ef. 8-20-86; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0028

Conduct of Formal Hearings on Major and Minor Violations

(1) Unless waived by the inmate, a formal hearing shall be conducted by the hearings officer on all misconduct reports charging a major rule violation(s), and included minor violations, on all misconduct reports charging a minor rule violation(s) for which an inmate requests a formal hearing, and on all misconduct reports referred by the adjudicator for a formal hearing in accordance with OAR 291-105-0041(6).

(2) The findings must be on the merits. Technical and clerical errors in the writing and/or processing of the misconduct report should not be grounds for dismissal, unless there is substantial prejudice to the inmate.

(3) Standard of Proof: Rules violation(s) shall be found upon proof by a preponderance of the evidence. The term preponderance of the evidence means the greater weight of evidence (e.g., 51% vs. 49%). It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate.

(4) The hearings officer shall consider such evidence as would be considered by reasonable persons in the conduct of their serious affairs.

(5) Once the formal hearing has begun, if the hearings officer determines that the major violations are not supported by the facts as written in the misconduct report, the hearings officer may substitute appropriate minor violations as lesser included violations and proceed with the hearing.

(6) At the hearing, the inmate will be allowed to speak in his/her own behalf, exercise his/her rights, and submit evidence as allowed in OAR 291-105-0056.

(7) The hearings officer may pose questions during the hearing.

(8) An investigation shall be conducted in a formal hearing upon the inmate's request if the information sought, taken in the light most favorable to the inmate, together with reasonable inferences to be drawn from the

ADMINISTRATIVE RULES

information, would constitute a defense to the charge or substantially mitigate the violation. The information sought must be within the ability of the facility to procure. If a request for investigation is denied, the reason(s) for denial shall be made a part of the record.

(9) Testimony of Witnesses:

(a) The hearings officer shall direct the scheduling and taking of testimony of witnesses at the hearing. Witnesses may include inmates, employees, or other persons. Testimony may be taken in person, by telephone, or by written report or statement.

(b) The inmate may request that the hearings officer schedule witnesses to present testimony at the hearing. The request should be submitted to the hearings officer in writing in advance of the hearing, and include a list of the person(s) the inmate requests be called to testify and the questions sought to be posed to each person. Requests for witnesses must minimally be made to the hearings officers at the time of the hearing. The hearings officer shall arrange for the taking of testimony from such witnesses as properly requested by the inmate, subject to the exclusions and restrictions provided in these rules. Requests for witnesses made or received after a hearing is decided will not be considered.

(c) The inmate shall not directly pose questions to any witness.

(d) The hearings officer may limit testimony when it is cumulative or irrelevant.

(e) The hearings officer may exclude a specific inmate or employee witness upon finding that the witness' testimony, if taken in the light most favorable to the inmate, together with the reasonable inferences to be drawn from that testimony, would not constitute a defense to the charge or substantially mitigate the violation, or that the witness' appearance at the hearing would present an immediate undue risk to the safe, secure, or orderly operation of the facility, specifically including the safety and security of DOC or OCE employees and inmates. If a witness is excluded, the reason(s) shall be made a part of the record.

(f) The hearings officer may exclude other persons as witnesses upon finding that the witness' testimony would not assist the hearings officer in the resolution of the disciplinary action, or that the witness' appearance at the hearing would present an undue risk to the safe, secure, or orderly operation of the facility, specifically including the safety and security of DOC or OCE employees and inmates. The reason(s) for exclusion shall be made a part of the record.

(g) The hearings officer may, on his/her own motion, call witnesses to testify.

(h) Witnesses requested by the inmate may refuse to testify.

(i) Persons requested as witnesses, other than inmates or employees, may refuse to appear and/or testify.

(j) All questions that may assist in eliciting evidence that, if taken in the light most favorable to the inmate, together with the reasonable inferences to be drawn from that evidence, would constitute a defense to the charge or substantially mitigate the violation shall be posed. The reason for not posing a question will be made part of the record.

(k) Confidential Informants:

(A) When confidential informant testimony is submitted to the hearings officer, the identity of the informant and the verbatim statement of the informant shall be submitted to the hearings officer in writing using form CD 1276, but shall remain confidential in accordance with OAR 291-105-0036(3).

(B) In order for the hearings officer to rely on the testimony of a confidential informant, information must be submitted to the hearings officer from which the hearings officer can find that the informant is a person who can be believed or that the information provided in the disciplinary action at issue is truthful.

(10) Documents/Physical Evidence:

(a) An inmate participating in a formal disciplinary hearing may present documents/physical evidence during the hearing, subject to the exclusions and restrictions provided in these rules.

(b) The reporting employee(s) or agent(s) of the Department of Corrections or Oregon Corrections Enterprises who are knowledgeable of the rule violation(s) charged in the misconduct report(s) may submit documents/physical evidence in advance of or during the hearing.

(c) The hearings officer may exclude documents/physical evidence upon finding that such evidence would not assist the hearings officer in the resolution of the disciplinary action, or that such evidence would present an undue risk to the safe, secure, or orderly operation of the facility, specifically including the safety and security of DOC or OCE employees and inmates. The reason(s) for exclusion shall be made a part of the record.

(d) The hearings officer may classify documents/physical evidence as confidential upon finding that disclosure would present an undue risk to the

safe, secure, or orderly operation of any Department of Corrections facility, specifically including the safety and security of DOC or OCE employees and inmates, or that disclosure would interfere with an ongoing official investigation. The reason(s) for classifying documents/ physical evidence as confidential shall be made a part of the record. Documents/physical evidence classified as confidential by the hearings officer shall not be shown or otherwise provided to the inmate.

(e) The hearings officer may show to the inmate or read into the record documents received in evidence. However, the hearings officer will not provide copies of the documents to the inmate. Inmates may request and obtain copies of nonexempt records in accordance with the department's rule on Release of Public Records (OAR 291-037).

(11) The hearings officer shall determine whether a violation has occurred and, if so, impose the appropriate sanction on the grid. The hearings officer may postpone the rendering of a decision for a reasonable period of time, not to exceed three working days, for the purpose of reviewing the evidence and imposing the appropriate sanction. The decision will be based solely upon information obtained in the hearing process, including DOC or OCE employee reports, the statements of the inmate charged, and evidence derived from witnesses and documents.

(12) At the formal hearing the hearings officer shall decide:

(a) No Violation: The hearings officer may find that the inmate did not commit the violation(s) charged, in which case the inmate will be restored to the same status and privileges as before he/she was charged.

(b) Violation: The hearings officer may find that the inmate committed the violation(s) charged, in which case, the hearings officer will so inform the inmate.

(c) Dismissal: The hearings officer may dismiss the alleged rule violation(s) without entering a finding if:

(A) There is insufficient evidence to support the alleged violation(s);

(B) Corrective action using less formalized procedures would be more appropriate;

(C) The inmate is released from custody.

(d) Violation of Transitional Leave: When conduct that constitutes a rule violation also constitutes a violation of the inmate's condition(s) of transitional leave, the hearings officer shall also find that the inmate violated the condition(s) of his/her transitional leave.

(13) At the conclusion of the hearing, the inmate shall be informed of the finding and any sanctions imposed.

(14) If no violation is found or all of the alleged charges are dismissed on the misconduct report(s), the report(s) shall not be placed in the inmate's file, but may be retained for statistical or litigation purposes in the Hearings Section records.

(15) Upon the finding of violation(s) by the hearings officer, the hearings officer shall:

(a) Determine the location of the violation(s) on the major or minor grids (Exhibits 1 and 2).

(b) Determine the inmate's prior misconduct history. (Evidence of the inmate's prior misconduct history shall be placed in the record either orally or in writing.)

(c) Determine which box on the grid is appropriate for the inmate's misconduct and his/her prior misconduct history.

(d) Impose sanctions within the range of sanctions in the appropriate box.

(e) Determine if a deviation (upward or downward) is appropriate. The hearings officer must document in writing the substantial reasons for the deviation in accordance with OAR 291-105-0072.

(f) Determine if consecutive sanctions are appropriate for separate rule violations arising from a single misconduct report. The hearings officer must document in writing the substantial reasons for consecutive sanctions, in accordance with OAR 291-105-0066(4)(b).

(16) The hearings officer may also consider imposing the additional sanctions that are available in the major range of sanctions (OAR 291-105-0069).

(17) The hearings officer may suspend imposition of any or all of the imposed disciplinary sanctions, informing the inmate of expected conduct to avoid imposition and the length of time for which the sanction will be suspended.

(18) The hearings officer may impose any or all sanctions previously suspended, after finding that the rule violation in question was also a violation of the conditions of the suspension.

(19) A verbatim record of the hearing shall be made. A written record will be made of the decision and the supporting reasons.

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

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

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Hist.: Formerly Exhibit 2 to OAR 291-105-026; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 19-2001(Temp), f. & cert. ef. 12-3-01 thru 6-1-02; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0031

Processing of the Formal Record on Major Violations

(1) Within seven working days following the conclusion of the hearing, the hearings officer shall prepare and issue a preliminary order containing the hearings officer's findings of fact and conclusions of law. Once issued, the preliminary order shall be delivered to the functional unit manager or designee for his/her review.

(2) The hearings officer may issue an amended order for restitution purposes. In all such instances, the hearings officer shall convene or reconvene a hearing with the inmate regarding the restitution issue(s), in accordance with the provision of OAR 291-105-0028 and 291-105-0056. In such cases the inmate shall be provided a Notice of Hearing in accordance with OAR 291-105-0056(3), a written description of what the restitution is for and the amount of restitution to be ordered.

(3) Upon receipt of the preliminary order, the functional unit manager or designee shall note the date received on the order. Within five working days after receipt of the preliminary order, the functional unit manager or designee shall do one of the following:

(a) Approve and sign the preliminary order without amendment, upon which the preliminary order becomes the Final Order;

(b) Issue an amended order dismissing the misconduct report(s) or changing the disciplinary sanction(s) (or their imposition) in the preliminary order, for one or more of the reasons specified in OAR 291-105-0031(5), upon which the amended order becomes the Final Order; or

(c) Order the hearings officer to reopen the hearing to receive and consider additional evidence not submitted in the original hearing, and to issue an amended preliminary order after consideration of the additional evidence.

(4) If the functional unit manager or designee fails to act on the preliminary order within five working days following its receipt, the preliminary order shall become the Final Order.

(5) Grounds for Issuance of Amended Orders: The functional unit manager or designee may issue an amended order for one or more of the following reasons:

(a) The evidence in the record is insufficient to support the violation(s) found, in which case the functional unit manager or designee may find a violation of a lesser included violation (see definitions) or order the dismissal of the misconduct report(s);

(b) The sanction(s) imposed by the hearings officer was not within the range of sanctions in the correct box on the grid, in which case the functional unit manager or designee may impose appropriate sanctions from the correct grid box;

(c) The deviation ordered by the hearings officer was not supported by written substantial reasons, in which case the functional unit manager or designee may impose the appropriate sanctions without the deviation, or order the deviation upon written substantial reasons found by the functional unit manager or designee;

(d) The deviation ordered by the hearings officer included a segregation sanction in excess of 50%, in which case the functional unit manager or designee shall impose a sanction that does not exceed 50%;

(e) The consecutive segregation sanctions imposed by the hearings officer for multiple rule violations arising out of the same misconduct report were not supported by written reasons, in which case the functional unit manager or designee may impose the segregation sanctions served concurrently, or order the segregation sanctions served consecutively upon written reasons;

(f) To order a deviation not ordered by the hearings officer, upon written substantial reasons found by the functional unit manager or designee;

(g) To impose mandatory consecutive sanctions not imposed by the hearings officer, for multiple rule violations arising out of two or more misconduct reports;

(h) To impose consecutive sanctions not imposed by the hearings officer, for multiple rule violations arising out of the same misconduct report, upon written reasons;

(i) To suspend imposition of any or all sanctions imposed by the hearings officer, informing the inmate of expected conduct to avoid imposition of the sanction(s); and

(j) To impose any or all sanctions ordered suspended by the hearings officer. The reasons for imposing the previously suspended sanctions shall be explained in writing in the order.

(k) To amend sanctions imposed or to impose sanctions not imposed by the hearings officer, within the range of sanctions listed in the appropriate grid box and OAR 291-105-0066(2), 291-105-0069 or 291-105-0071.

(6) Within five working days after the Final Order is signed by the functional unit manager or his/her designee, or after a preliminary order becomes the Final Order under OAR 291-105-0031(3) and (4), a copy of the Final Order shall be provided to the inmate.

(7) Minor typographical or calculation errors on the written Findings of Fact, Conclusions and Order may be rectified by correcting that document to accurately reflect the results of the hearing, without actually reconvening the hearing. The inmate shall be notified in writing of such corrections.

(8) The record of the hearing and supporting documents shall be maintained in the hearings officer's records for a minimum of two years. A copy of the misconduct report(s) and the Final Order (Findings of Fact, Conclusions and Order) shall be permanently retained in the inmate's working file, except in those instances where all major charges have been reduced to minor violations or dismissed by the hearings officer.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0036

Preparation of the Formal Record on Major and Minor Violations

(1) The record of the formal hearing shall include:

(a) The misconduct report(s);

(b) The Notice of hearing and rights;

(c) Supporting material;

(d) The Final Order (Findings of Fact, Conclusions and Order) issued by the hearings officer, functional unit manager or his/her designee.

(2) A transcript or recording of the hearing shall not be a part of the record, however, it shall be prepared and provided to the Inspector General, Attorney General or their designees or to the court, upon request. A copy of the transcript or recording of the hearing shall not be provided directly to the inmate by the hearings office.

(3) Information received that is determined to be confidential shall be clearly labeled "confidential" and shall not be shared with or provided to inmates. Confidential information may be summarized for the inmate at the time of his/her hearing, without releasing the confidential information verbatim or the name of a confidential informant. Confidential information may be shared with the functional unit manager. Confidential information may also be shared with department employees, the Attorney General or the courts with approval of the Inspector General or the Hearings Administrator. Employee requests for confidential information shall be approved by the functional unit manager prior to being forwarded to the Inspector General or the Hearings Administrator. Such confidential information shall be archived in a secure area outside the secure perimeter of any facility.

Stat. Auth.: ORS 179.040, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.180, 423.020, 423.030 & 423.075

Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 32-1987(Temp), f. & ef. 8-5-87; CD 38-1987, f. & ef. 10-2-87; CD 11-1988, f. & cert. ef. 8-19-88; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0041

Adjudicator Responsibilities

(1) An adjudicator and designated alternate(s) shall be appointed by the functional unit manager in each Department of Corrections facility.

(2) Duties and Powers of the Adjudicator: The adjudicator will receive all misconduct reports, once they have been reviewed and approved by a reviewing supervisor and a copy has been provided to the inmate. The adjudicator shall:

(a) Promptly forward the misconduct reports to the hearings section for entry into the Disciplinary Misconduct System (DMS) and assignment of a case number. The hearings section will promptly return misconduct reports charging only minor rule violations to the adjudicator once they have been entered into the DMS and assigned a case number.

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(b) Refer all major reports and all minor reports for which the inmate requests a formal hearing to the hearings officer who shall proceed in accordance with OAR 291-105-0028. If a case contains both major and minor violations, the entire incident, even if it involves more than one inmate, shall be handled by the hearings officer in a formal hearing.

(c) Report disciplinary actions which involve security threat group activity to the facility's security threat group manager.

(d) Conduct an informal hearing on minor reports in accordance with OAR 291-105-0046.

(3) The adjudicator shall not have been a witness to the event, have personal knowledge of any material, disputed fact relating to the case or have participated in the case as a charging or investigating officer.

(4) The adjudicator shall conduct the informal hearing and decide whether the inmate has violated the rule(s) as charged in the misconduct report. The adjudicator may not add or change the violations in the misconduct report.

(5) The adjudicator may dismiss the misconduct report(s) at any stage of the proceedings, with or without prejudice, stating in writing the reason for the dismissal. A new misconduct report dismissed without prejudiced may be resubmitted in accordance with OAR 291-105-0021(2).

(6) The adjudicator may decline to conduct an informal hearing and refer the case to the hearings officer for a formal hearing when the inmate's mental competency is an issue.

Stat. Auth.: ORS 179.040, 421.180, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.180, 423.020, 423.030 & 423.075
Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85 CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0046

Conduct of the Informal Hearings on Minor Violations

(1) An informal hearing shall be conducted by the adjudicator/designee on all misconduct report(s) which do not charge a major violation(s), unless the inmate requests a formal hearing, in writing, on the Notice of Inmate Rights form, prior to the informal hearing.

(2) Findings by the adjudicator/designee must be on the merits. Technical and clerical errors in the writing and/or processing of the misconduct report shall not be grounds for dismissal.

(3) The adjudicator/designee shall consider such evidence as would be considered by reasonable persons in the conduct of their serious affairs.

(4) Standard of Proof: Rule violation(s) shall be found upon proof by a preponderance of the evidence. The term preponderance of the evidence means the greater weight of evidence (e.g., 51% vs. 49%). It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate.

(5) The inmate shall be given the opportunity to speak in his/her own behalf, exercise his/her rights, and submit evidence as set forth in OAR 291-105-0056. Inmates shall not be permitted to call witnesses in an informal hearing.

(6) The adjudicator may pose questions during the hearing.

(7) Documents/Physical Evidence:

(a) An inmate participating in an informal disciplinary hearing may present documents/physical evidence during the hearing, subject to the exclusions and restrictions provided in these rules.

(b) The reporting employee(s) or agent(s) of the Department of Corrections or Oregon Corrections Enterprises who are knowledgeable of the rule violation(s) charged in the misconduct report(s) may submit documents/physical evidence in advance of or during the hearing.

(c) The adjudicator/designee may exclude documents/physical evidence upon finding that such evidence would not assist the adjudicator in the resolution of the disciplinary action, or that such evidence would present an undue risk to the safe, secure or orderly operation of the facility, specifically including the safety and security of DOC or OCE employees and inmates. The reason(s) for exclusion shall be made a part of the record.

(d) The adjudicator/designee may classify documents/physical evidence as confidential (and not disclose such evidence to the inmate) upon finding that disclosure would present an undue risk to the safe, secure or orderly operation of the facility, specifically including the safety and security of DOC or OCE employees and inmates, or that disclosure would interfere with an ongoing official investigation or criminal prosecution. The reason(s) for classifying documents/ physical evidence as confidential shall be made a part of the record.

(8) At the informal hearing the adjudicator/designee shall decide:

(a) No Violation: The adjudicator/ designee may find that the inmate did not commit the violation charged, in which case the inmate will be restored to the same status and privileges as before he/she was charged.

(b) Violation: The adjudicator/designee may find that the inmate did commit the violation charged, in which case, the adjudicator will so inform the inmate.

(c) Dismissal: The adjudicator/designee may dismiss the alleged rule violation(s) without entering a finding if:

(A) There is insufficient evidence to support the alleged violation(s); or

(B) Corrective action using less formalized procedures would be more appropriate; or

(C) The inmate is released from custody.

(9) At the conclusion of the hearing the inmate shall be informed of the finding and any sanctions imposed.

(10) If the inmate is found in violation, the record of the decision shall be retained in the Hearings Unit records for a minimum of two years.

(11) Upon finding that a violation occurred as charged, the adjudicator/designee shall:

(a) Determine the location of the violation(s) on the minor disciplinary grid (Exhibit 2).

(b) Impose sanctions within the range of sanctions in the appropriate box.

(12) The adjudicator/designee may also consider imposing the additional sanctions that are available in the minor range of sanctions (OAR 291-105-0071).

(13) The adjudicator/designee may suspend imposition of any or all of the ordered disciplinary sanctions, informing the inmate of expected future conduct to avoid imposition and the length of time for which the sanction will be suspended.

(14) The adjudicator may impose any or all sanctions previously suspended, after finding that the rule violation in question was also a violation of the conditions of the suspension.

(15) The adjudicator/designee may give a verbal warning and reprimand in lieu of sanctions on the minor grid, informing the inmate of expected future conduct.

(16) No verbatim recording of the hearing shall be made.

(17) If the inmate is transferred to another facility before the informal hearing is complete, the misconduct report shall be forwarded to the other facility for processing.

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

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075
Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 30-1985, f. & ef. 8-16-85; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0058

Investigations in Formal and Informal Hearings on Major and Minor Violations

(1) The adjudicator or hearings officer may order an investigation on his/her own motion.

(2) The investigator shall not have been a witness to the event, have personal knowledge of any material, disputed fact relating to the case or have participated in the case as a charging officer.

(3) The adjudicator or hearings officer shall allow the inmate access to the results of the investigation unless disclosure of the investigative results would constitute a threat to the safety, security, or orderly operation of a Department of Corrections facility. The reason(s) for nondisclosure shall be made a part of the record. Access minimally refers to the verbal disclosure by the hearings officer of the results of an investigation. The adjudicator or hearings officer shall not be required by this rule to provide the inmate with copies of supplemental documents that comprise the case against him or her.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075
Stats. Implemented: ORS 179.040, 421.180, 423.020, 423.030 & 423.075
Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp) f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0066

Principles of Application of Disciplinary Sanctions

(1) A single act of misconduct may violate more than one misconduct rule.

ADMINISTRATIVE RULES

(2) Loss of Privilege: If the inmate's misconduct involves the abuse or misuse of a specific privilege (i.e., recreation yard, canteen, etc.), the hearings officer or adjudicator may order a loss of that specific privilege, and may increase the loss of that specific privilege sanction up to twice the amount listed in the appropriate grid block.

(3) For rule violations arising out of separate misconduct reports, segregation sanctions shall be served consecutively, up to 180 days.

(4) For rule violations arising out of the same misconduct report:

(a) Concurrent segregation sanctions may be imposed by the hearings officer or functional unit manager, up to 180 days. The inmate shall be ordered to only serve the sanction for the most serious violation in the misconduct report.

(b) Consecutive sanctions may be imposed by the hearings officer or functional unit manager. The reasons for consecutive sanctions shall be supported by written substantial reasons outlining the factor(s) supporting the consecutive sanctions. No aspect of the misconduct that serves as a necessary element of misconduct may be used as an aggravating factor if that factor is also used to impose discipline.

(5) The Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions contains two inmate disciplinary grids. One grid governs inmate disciplinary action for major violations (**Exhibit 1**). One grid governs inmate disciplinary action for minor violations (**Exhibit 2**).

(6) Each of the inmate disciplinary grids shall outline the available sanctions within each box, which includes fines, segregation time and the loss of privileges.

(7) There are additional sanctions that will be available to the hearings officers and adjudicators at all levels of discipline for major violations and minor violations (OAR 291-105-0069 and 0071). These sanctions shall be applied consistently and in proportion to the violation and the inmate's prior misconduct.

(8) Merger/Consecutive Sanctions: In the case of multiple rule violations, a hearings officer or adjudicator shall impose a sanction or sanctions for only the single most severe or most applicable rule violation found as charged in a single misconduct report, except as specifically allowed by OAR 291-105-0066(4)(b). The applicable sanctions for the remaining rule violations shall be deemed to have merged with the sanction(s) imposed for the single rule violation, unless consecutive sanctions are imposed as authorized in OAR 291-105-0066(4)(b).

(9) The hearings officer may consider input from Special Management Unit or Counseling and Treatment Services Unit employees and recommend that sanctions be modified or are contraindicated, irrespective of the sanctions contained on the disciplinary grids and OAR 291-105-0069 and 0071.

(10) Limitations on the Length of Confinement in Disciplinary Segregation for Rule Violations:

(a) No inmate shall be confined in disciplinary segregation for more than 180 consecutive days. On the 180th consecutive day of confinement in disciplinary segregation, an inmate shall be reassigned and ordered to other housing. Once reassigned and ordered to other housing, the inmate shall be subject to additional confinement in disciplinary segregation (up to a maximum of another 180 days) as a sanction for a new rule violation, notwithstanding that the inmate remains in the segregation unit.

(b) Once an inmate has received the maximum sanction of 180 consecutive days, the hearings officer or adjudicator is not required to impose any additional segregation sanction. The hearings officer or adjudicator is also not required to order additional loss of privileges sanctions to an inmate who has already received the maximum 180 days segregation sanction, if he/she determines that the sanction would not be meaningful to the inmate. Such action shall be made a part of the written record of the hearing.

(c) New Violations Committed While Assigned to Disciplinary Segregation: If an inmate is ordered to serve an additional disciplinary segregation sanction for committing a new rule violation while assigned to disciplinary segregation, the additional disciplinary segregation sanction shall be served consecutive to any prior segregation sanctions then being served, up to a maximum of 180 days.

(d) New Violations Committed While Assigned to Intensive Management Unit/IMU Status: An inmate who commits a new rule violation while assigned to the Intensive Management Unit (IMU), or while assigned to IMU status, shall not be ordered to serve a disciplinary segregation sanction for the violation. The inmate shall be subject to the range of additional sanctions described in OAR 291-105-0069 & 291-105-0071, including but not limited to fines and loss of privileges.

(11) When an inmate has been assigned to segregation as part of a disciplinary sanction that is Level I or Level II on the major violation grid and the inmate is temporarily transferred to the custody of a jurisdiction other than the department, or is released from prison, he/she shall not be given credit for time served in segregation while he/she is out of department custody. Once the inmate is returned the department's custody, the number of days he/she actually served in segregation will be subtracted from the total original sanction and he/she will serve the remainder of the segregation sanction in a department segregation unit.

(12) In those instances where there exists a need to create available bed space in a segregation unit, the functional unit manager or designee, in his/her sole discretion, may release an inmate(s) from segregation and order the remainder of the sanction be served as loss of privileges in the general inmate population, in accordance with the Department of Corrections rule on Segregation (Disciplinary) (OAR 291-011).

(13) Inmates who commit a rule violation may be subject to classification review in accordance with the Department of Corrections rule on Classification (Inmate) (OAR 291-104).

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

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 29-1986, f. & ef. 8-20-86; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0069

Additional Sanctions for Major Violations

(1) The additional sanctions available to the hearings officer for major violations are:

(a) Restitution: Inmates shall be responsible for making full restitution for any damage or loss of property. In addition, inmates shall be financially responsible for all costs associated with and/or resulting from the violation. These shall include the costs of any drug urinalysis testing. There is no limit on the amount of restitution which can be imposed for a major sanction. There must always be a factual basis in the record to support the restitution amount and that amount must be reasonable.

(b) Confiscation of property/ contraband.

(c) Reduction to Basic Visiting Status (non-contact): For any major violation, basic visiting status may be imposed up to a maximum of 180 days for any one violation. Any inmate found in violation of Distribution I, or Contraband I involving drugs, drug paraphernalia, or drug testing including attempt or conspiracy, within the past four years shall be restricted to basic visits for each violation as follows: First violation: 1 year (365 days). Second violation: 2 years (730 days). Third or more violation(s): 4 years (1,460 days)

(A) Basic visiting sanctions shall be served consecutively to the conclusion of any assignment to disciplinary segregation and/or Intensive Management Unit.

(B) Reduction to basic visiting status sanctions shall be served consecutively up to 7 years (2,555 days). No inmate shall serve more than 7 years (2,555 days) of consecutive reduction to basic visiting status sanctions at any one time.

(d) Extra Work Detail: For a major violation, the limit on extra work detail is a maximum of 80 hours, to be completed within 30 days after the Final Order has been signed.

(e) Revocation of short-term transitional leave and return the inmate to a Department of Corrections facility.

(f) Recommendation for no Favorable Future Consideration of Parole Release Date.

(g) Recommendation for an extension of parole release date in accordance with the rule on Prison Term Modification (OAR 291-097).

(h) Recommendation for reduction in earned time, good time or extra good time credits in accordance with the rule on Prison Term Modification (OAR 291-097).

(2) Recommendations for reduction of earned time or good time and recommendations for an extension of parole release date shall be mandatory sanctions for all violations at level one of the major misconduct grid.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 29-1986, f. & ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

ADMINISTRATIVE RULES

291-105-0072

Deviation Sanctions for Major Violations

(1) Once the level of discipline has been determined, according to the disciplinary grid, the hearings officer or functional unit manager or his/her designee may deviate, either upward or downward on major violations in formal hearings. This deviation, under no circumstances, may exceed 50% of the segregation sanction in the inmate's appropriate box on the grid. All deviations shall be supported by written "substantial reasons" outlining the mitigating or aggravating factors which support the deviation. All deviations shall be subject to review by the functional unit manager or his/her designee.

(2) There may be only one deviation ordered for each sanction imposed. The hearings officer and functional unit manager may NOT both order a separate deviation for one sanction.

(3) Deviations may only be ordered for major violations. Deviations may not be ordered for minor violations.

(4) Substantial reasons will be separated into mitigating and aggravating factors.

(5) The following list of mitigating and aggravating factors may be considered when determining substantial reasons for a deviation. Other factors not listed may also constitute substantial reasons for mitigation or aggravation.

(a) Mitigating factors:

(A) The inmate acted under duress or compulsion (not sufficient as a complete defense).

(B) The inmate's mental capacity was diminished (excluding diminished capacity due to voluntary drug or alcohol abuse).

(C) The misconduct was principally accomplished by another and the inmate exhibited extreme caution or concern for the victim.

(D) The victim (if any) was an aggressor or participant in the behavior associated with the misconduct.

(E) The inmate played a minor or passive role in the misconduct.

(F) The inmate cooperated with the department with respect to the current misconduct or any other misconduct by the inmate or other inmates.

(G) The degree of harm or loss attributed to the current misconduct was significantly less than typical for such misconduct.

(b) Aggravating factors:

(A) Threat of or actual violence toward a witness or victim.

(B) Persistent involvement in similar misconduct or repetitive assaults.

(C) Use of a weapon in the commission of the misconduct.

(D) Deliberate cruelty to victim.

(E) The inmate knew or had reason to know of the victim's particular vulnerability, such as the extreme youth, age, disability or ill health of victim, which increased the harm or threat of harm caused by the misconduct.

(F) The misconduct involved multiple victims or incidents.

(G) The misconduct was part of an organized operation.

(H) The misconduct resulted in a permanent injury to the victim.

(I) The degree of harm or loss attributed to the current violation was significantly greater than typical for such misconduct.

(J) The misconduct was motivated entirely or in part by the race, sex, color, religion, ethnicity or national origin of the victim.

(K) The timing and location of the misconduct directly threatened the safety, security, or orderly operation of the facility significantly more than typical for such misconduct.

(c) No aspect of the misconduct that serves as a necessary element of misconduct may be used as an aggravating factor if that aspect is also used to impose discipline.

Stat. Auth.: ORS 179.040, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.180, 423.020, 423.030 & 423.075

Hist.: CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0081

Adjustments to Final Order

(1) Based upon an inmate's significant positive behavior change, the functional unit manager/designee may make adjustments to the final order either at his/her discretion, or upon employee recommendation.

(2) Adjustments to segregation time and fine sanctions from final orders may not exceed the limits established in Exhibit 3.

(3) Adjustments of up to 50% of the total sanction accrued to that point in time may be made, on a one-time basis, only to basic visiting and retraction of earned/good time credits. At no time will an adjustment to an inmate's reduction of earned/good time sanctions cause the inmate's release date to occur less than 60 days from the date of the adjustment.

(4) Adjustments shall be at the sole discretion of the functional unit manager. Adjustments shall not be made until after consideration of each individual inmate's particular circumstances.

(5) Adjustments to final orders shall be documented in writing and be provided to appropriate sections for necessary action, including the hearings section where the amendment will be entered into the Disciplinary Misconduct System.

Stat. Auth.: ORS 179.040, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.180, 423.020, 423.030 & 423.075

Hist.: DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0085

Administrative Review

(1) Any order for rule violations on Level I or Level II of the major violation grid or, which recommends an extension of the inmate's parole release date or retraction of earned time, good time or extra good time credits; or which recommends a deviation from the segregation sanction listed on the grid is subject to review by the Inspector General.

(2) Petitions for administrative review must be filed by the inmate with the Inspector General within 60 calendar days after the Final Order is signed by the functional unit manager or his/her designee or after a preliminary order becomes the Final Order under OAR 291-105-0031(3). Filing a petition for administrative review shall not stay the imposition of a sanction. Petitions for administrative review shall minimally state the following:

(a) The date the hearing was completed and the hearing case number (i.e., 0104-A001-A03).

(b) The rule violation(s) (i.e., Assault I, Contraband I, etc.) of which the inmate was found in violation or sanction which meets the review criteria listed in (1) above.

(c) Sufficient information to show why there was not substantial compliance with the rule, that the finding was not based upon a preponderance of the evidence or that the sanction imposed was not in accordance with provisions set forth in the rule (OAR 291-105).

(3) Upon receipt of the petition for administrative review, the Inspector General shall review the case to determine:

(a) Was there substantial compliance with the rule (OAR 291-105);

(b) Was the finding based upon a preponderance of evidence; and

(c) Was the sanction imposed in accordance with the provisions set forth in the rule (OAR 291-105).

(4) If the Inspector General determines there was substantial compliance with the rule (OAR 291-105), the finding was based on a preponderance of evidence and the sanctions imposed were in accordance with the provisions set forth in the rule (OAR 291-105), he/she shall so inform the inmate.

(5) If the Inspector General determines there was not substantial compliance with the rule (OAR 291-105), the finding was not based on a preponderance of the evidence or the sanctions imposed were not in accordance with provision set forth in the rule (OAR 291-105), he/she shall direct the hearing to be reopened or vacate all or part of the final order in the case.

(6) The Inspector General shall provide the inmate with a written response to the petition for administrative review within 60 days from the date it is received by him/her. Documentation submitted to the Inspector General shall not be returned to the inmate.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Hist.: CD 19-1979(Temp), f. & ef. 10-19-79; CD 13-1980, f. & ef. 4-15-80; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 32-1987(Temp), f. & ef. 8-5-87; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-15-92; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; Renumbered from 291-105-0073, DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

291-105-0100

Vacating/Amending the Final Order or Reopening a Hearing in the Interest of Justice

The Assistant Director for Operations or the Administrator for Institutions may, in his/her sole discretion and in the interest of justice, vacate all or part of a final disciplinary order and/or direct that a disciplinary hearing be reopened for consideration of new evidence.

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Hist.: DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05

Adm. Order No.: DOC 10-2005

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ADMINISTRATIVE RULES

Notice Publication Date: 1-1-05

Rules Adopted: 291-082-0025, 291-082-0026, 291-082-0027

Rules Amended: 291-082-0010, 291-082-0020

Rules Ren. & Amended: 291-082-0030 to 291-082-0021

Subject: These rule amendments are necessary to establish eligibility criteria for inmates assigned to work on a community custody work assignment, on-site work assignment, or unfenced minimum housing.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-082-0010

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, 421.445, 423.020, 423.030, 423.075 and Article I, Section 41 of the Oregon Constitution.

(2) Purpose: The purpose of these rules is to establish Department of Corrections policy and procedures relating to the assessment, assignment, and supervision of inmates assigned to community custody work crews, on-site work assignments and unfenced minimum housing.

(3) Policy: The department has specific eligibility criteria for inmates who are assigned to community custody work crews, on-site work assignments and unfenced minimum housing. Consistent with the mandates and purposes of Article I, section 41 of the Oregon Constitution, the Department of Corrections will seek opportunities to enter into cooperative agreements with local, state, federal governmental agencies, private non-profit and private entities for the use of inmate labor and services on work projects. The department will enforce the following procedures for inmate work crew supervision to support the safety of the community, staff, supervisors, and inmates, while inmates are working in the community.

Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.425, 423.020, 423.030 & 423.075

Hist.: CD 29-1997(Temp), f. & cert. ef. 12-12-97 thru 6-11-98; DOC 13-1998, f. & cert. ef. 6-10-98; DOC 3-2002, f. & cert. ef. 1-16-02; DOC 1-2005(Temp), f. & cert. ef. 1-7-05 thru 7-6-05; Administrative correction 7-20-05; DOC 10-2005, f. & cert. ef. 8-1-05

291-082-0020

Definitions

(1) Agency Work Crew: One or more inmates assigned to work in the community on a local, state (other than Department of Corrections) or federal governmental agency work project, outside of a Department of Corrections facility. An employee or agent of the local, state or federal governmental agency may supervise inmates assigned to an agency work crew pursuant to an intergovernmental agreement entered into by the agency and the Department of Corrections.

(2) Assignment and Assessment for Work and Housing:

(a) Community Custody: Custody of an inmate assigned to a work program/project that is located in the community, off Department of Corrections grounds.

(b) On-site Work Assignments: Work assignments that are restricted to institution grounds and/or department occupied building and/or grounds outside the perimeter fence.

(c) Static 99: The Static 99 is an actuarial instrument designed to estimate the probability of sexual recidivism among adults. It is used to determine which offenders will be designated "predatory."

(d) STATIC-99 CODING RULES Category "A" Offenses: The list of sexual offenses that can involve an identifiable child or non-consenting adult victim and includes all contact offences. Category "A" Offenses are listed in Exhibit I.

(e) Inmate Community Custody/On-Site Work Eligibility Review Form (CD 1441): The review assessment form approved by the department used to determine an inmate's eligibility for work and housing assignments.

(3) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(4) Department of Corrections Employee: Any person employed full-time, part-time, or under any temporary appointment by the Department of Corrections; any person under contractual arrangement to provide services to the department; any person employed by private or public sector agencies who is serving under department-sanctioned special assignment to provide services or support to the department programs.

(5) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision or probation status.

Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.445, 423.020, 423.030 & 423.075

Hist.: CD 29-1997(Temp), f. & cert. ef. 12-12-97 thru 6-11-98; DOC 13-1998, f. & cert. ef. 6-10-98; DOC 3-2002, f. & cert. ef. 1-16-02; DOC 1-2005(Temp), f. & cert. ef. 1-7-05 thru 7-6-05; Administrative correction 7-20-05; DOC 10-2005, f. & cert. ef. 8-1-05

291-082-0021

Inmate Work Crews Agreements

(1) The Department of Corrections may, in its discretion, assign inmate work crews to work in the community on local, state, federal governmental agencies, private non-profit or private entity work projects.

(2) Institution superintendents will use private partnership review guidelines in determining appropriateness of private sector agreement requests.

Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.445, 423.020, 423.030 & 423.075

Hist.: CD 29-1997(Temp), f. & cert. ef. 12-12-97 thru 6-11-98; DOC 13-1998, f. & cert. ef. 6-10-98; DOC 3-2002, f. & cert. ef. 1-16-02; DOC 1-2005(Temp), f. & cert. ef. 1-7-05 thru 7-6-05; Administrative correction 7-20-05; Renumbered from 291-082-0030, DOC 10-2005, f. & cert. ef. 8-1-05

291-082-0025

Community Custody/On-Site Work Assignments

(1) Only those inmates classified as minimum custody in accordance with the Department of Corrections rule on Classification (Inmate), OAR 291-104, are eligible to be considered for assignment to a community custody work assignment, on-site work assignment or unfenced minimum housing.

(2) An inmate is ineligible for assignment to a community custody work assignment, on-site work assignment or unfenced minimum if he/she:

(a) Has ever been designated as a predatory sex offender in Oregon or any other state;

(b) Has an Immigration and Custody Enforcement (ICE) formerly Immigration and Naturalization Service (INS) hold;

(c) Has a felony detainer that runs consecutive to another sentence(s), or verified pending felony charges;

(d) Has any medical restrictions as identified by Health Services staff that may limit or prohibit the inmate from participating in work assignments;

(e) Has any psychological restrictions as identified by Counseling Treatment Services staff that may limit or prohibit the inmate from participating in work assignments;

(f) Has any conviction for Arson I; or

(g) Has a current stalking order, or a conviction history of felony stalking.

Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.445, 423.020, 423.030 & 423.075

Hist.: DOC 10-2005, f. & cert. ef. 8-1-05

291-082-0026

Eligibility Criteria Related to Sex Offenses

(1) A Static 99 will be completed only for inmates with a current crime of conviction for any of the offenses listed in STATIC-99 CODING RULES Category "A" Offenses found in **Exhibit I**.

(2) If an inmate scores three or below on the Static 99:

(a) The information from the Static 99 assessment will be used in conjunction with a review of victim and community interests to determine placement in a community custody work assignment or on-site work assignment.

(b) Additional specific data will be collected and recorded on the Inmate Community Custody/On-Site Work Eligibility Review form (CD 1441) as described in the department's policy 40.2.9 Inmate Eligibility/Ineligibility for Participation in Work Assignments and Unfenced Minimum Housing Process.

(3) An inmate with a score of four or greater on the Static 99 and who has a past or current conviction for any of the following offenses, including attempt, is ineligible for a community work assignment or an on-site work assignment:

(a) Rape I as described in ORS;

(b) Rape II as described in ORS;

(c) Rape III as described in ORS;

(d) Sodomy I as described in ORS;

(e) Sodomy II as described in ORS;

(f) Sodomy III as described in ORS;

(g) Unlawful Sexual Penetration I as described in ORS;

(h) Unlawful Sexual Penetration II as described in ORS;

(i) Sexual Abuse I as described in ORS;

(j) Sexual Abuse II as described in ORS;

(k) Sexual Abuse III as described in ORS.

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(4) An inmate with a score of four or greater on the Static 99 and who has a current conviction of any sex crime listed in Category "A" Offenses, other than those listed in (3) above is ineligible for a community work assignment or an on-site work assignment.

(5) Inmates who have a current crime of conviction for any sex crime are not eligible for unfenced minimum housing.

(6) Pursuant to ORS 421.455, Forest work camps; restrictions on placement at camps:

(a) The Director of the Department of Corrections shall establish at places in state forests recommended by the State Board of Forestry one or more forest work camps at which state inmates and local inmates may be employed.

(b) Only such state inmates as are determined by the Department of Corrections to require minimum security may be placed at a forest work camp, but the Department of Corrections shall not place an inmate at a forest work camp if the department is aware that the inmate has ever been convicted, of:

- (A) Rape in the first degree, as described in ORS;
- (B) Rape in the second degree, as described in ORS;
- (C) Rape in the third degree, as described in ORS;
- (D) Sodomy in the first degree, as described in ORS;
- (E) Sodomy in the second degree, as described in ORS;
- (F) Sodomy in the third degree, as described in ORS;
- (G) Unlawful sexual penetration in the first degree, as described in

ORS;

(H) Unlawful sexual penetration in the second degree, as described in ORS;

- (I) Sexual abuse in the first degree, as described in ORS;
- (J) Sexual abuse in the second degree, as described in ORS;
- (K) Any crime in any other jurisdiction that would constitute a crime described in this subsection if presently committed in this state.

(L) Any attempt to commit a crime described in this subsection.

[ED. NOTE: Exhibit referenced are available from the agency.]
Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 10-2005, f. & cert. ef. 8-1-05

291-082-0027

Inmate Community Custody/On-Site Work Eligibility Review Process

(1) An Inmate Community Custody/On-Site Work Eligibility form (CD 1441) shall be completed for all eligible inmates being considered for a community work assignment, on-site work assignment or unfenced minimum housing.

(2) The institution superintendent may further limit, which minimum custody inmates are eligible for assignment to inmate work crews or unfenced minimum housing.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 10-2005, f. & cert. ef. 8-1-05

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Department of Fish and Wildlife Chapter 635

Adm. Order No.: DFW 78-2005(Temp)

Filed with Sec. of State: 7-19-2005

Certified to be Effective: 7-21-05 thru 7-22-05

Notice Publication Date:

Rules Amended: 635-017-0090

Subject: Amend rule to extend the Pacific Lamprey Harvest season in the Willamette River.

Rules Coordinator: Katie Thiel—(503) 947-6033

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;

(A) Notwithstanding the fishing season identified in (2)(b), harvest of Pacific lamprey for personal use is permitted Thursday, July 21 and Friday, July 22, 2005.

(B) Fishing is allowed from 7:00 am to 6:00 pm.

(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; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05

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Adm. Order No.: DFW 79-2005(Temp)

Filed with Sec. of State: 7-22-2005

Certified to be Effective: 7-25-05 thru 8-31-05

Notice Publication Date:

Rules Amended: 635-041-0074

Rules Suspended: 635-041-0074(T)

Subject: Adopt rule to extend the summer commercial gillnet fishery and platform and hook-and-line, within Zone 6, for Treaty Indian fishers in the Columbia River. Implementation consistent with action taken July 22, 2005, by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

ADMINISTRATIVE RULES

635-041-0074

Summer Salmon Season

(1) Chinook, coho, steelhead, sockeye, walleye, carp, and shad may be taken for commercial purposes from mainstem Columbia River, Zone 6, beginning 6 a.m., Tuesday, July 5, 2005 through 6:00 p.m., Thursday, July 7, 2005; 6:00 a.m., Monday, July 11, 2005 through 6:00 p.m., Thursday, July 14, 2005; 6:00 a.m., Monday, July 18, 2005 through 6:00 p.m., Friday, July 22, 2005; 6:00 a.m., Monday, July 25, 2005 through 6:00 p.m., Friday, July 29, 2005.

(2) Closed areas set forth in OAR 635-041-0045, except the Spring Creek sanctuary.

(3) There are no mesh size restrictions.

(4) Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools may be kept for subsistence use. Sturgeon from the Bonneville Pool between 45–60 inches in length may be kept for subsistence use.

(5) Commercial sale of platform and hook-and-line caught fish is allowed beginning 6:00 a.m., Monday, July 4, 2005 until further notice.

(a) Gear is restricted to subsistence fishing gear; hoopnets, dipnets, rod and reel with hook-and-line.

(b) Allowable sales include chinook, coho, steelhead, sockeye, walleye, carp, and shad.

(c) Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools may be kept for subsistence use. Sturgeon from the Bonneville Pool between 45–60 inches in length may be kept for subsistence use.

(6) Sale of platform and hook-and-line caught fish from Klickitat River and Big White Salmon River is allowed beginning Monday, July 4, 2005, during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: DFW 69-2005(Temp), f. 7-1-05, cert. ef. 7-4-05 thru 8-31-05; DFW 74-2005(Temp), f. & cert. ef. 7-8-05 thru 8-31-05; DFW 79-2005(Temp), f. 7-22-05, cert. ef. 7-25-05 thru 8-31-05

Adm. Order No.: DFW 80-2005(Temp)

Filed with Sec. of State: 7-22-2005

Certified to be Effective: 7-25-05 thru 7-31-05

Notice Publication Date:

Rules Amended: 635-042-0023

Rules Suspended: 635-042-0023(T)

Subject: Amend rule to extend the summer chinook gillnet commercial fishery in the Columbia River mainstem. Implementation consistent with action taken July 22, 2005, by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0023

Summer Salmon Season

(1) Chinook salmon, coho salmon, sturgeon, and shad may be taken for commercial purposes in the waters of the Columbia River: Zones 1–5, as identified in OAR 635-042-0001.

(2) Gear is restricted to gill nets with an 8-inch minimum mesh size and a 9-3/4-inch maximum mesh size.

(a) Use of monofilament nets is allowed.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(3) The open fishing periods are:

(a) 7:00 p.m., June 23, 2005 to 5:00 a.m., June 24, 2005.

(b) 7:00 p.m., June 27, 2005 to 5:00 a.m., June 28, 2005.

(c) 7:00 p.m., July 5, 2005 to 5:00 a.m., July 6, 2005.

(d) 7:00 p.m., July 11, 2005 to 5:00 a.m., July 12, 2005.

(e) 7:00 p.m., July 18, 2005 to 5:00 a.m., July 19, 2005.

(f) 7:00 p.m., July 25, 2005 to 5:00 a.m., July 26, 2005.

(4) A maximum of three sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) the fishery is open. The three sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: DFW 58-2005(Temp), f. 6-21-05, cert. ef. 6-23-05 thru 12-20-05; DFW 73-2005(Temp), f. 7-8-05, cert. ef. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 7-31-05; DFW 80-2005(Temp), f. 7-22-05, cert. ef. 7-25-05 thru 7-31-05

Adm. Order No.: DFW 81-2005(Temp)

Filed with Sec. of State: 7-25-2005

Certified to be Effective: 7-29-05 thru 12-31-05

Notice Publication Date:

Rules Amended: 635-013-0004

Subject: Amend rule to expand the ocean recreational salmon fishery season from Leadbetter Point, WA to Cape Falcon, Oregon.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-013-0004

Inclusions and Modifications

(1) OAR 635-013-0005 through 635-013-0009 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subparts A and H**, and the **2005 Oregon Sport Fishing Regulations**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**, and the **2005 Oregon Sport Fishing Regulations** contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supercede the published federal regulations and the **2005 Oregon Sport Fishing Regulations**. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subparts A and H)**.

(4) Effective July 29, 2005, in the area from Leadbetter Point, WA, to Cape Falcon, OR, the salmon fishery is open seven days per week. The bag limit is two salmon per day. Minimum length requirements are 24-inches for chinook and 16-inches for coho. All retained coho must have a healed adipose fin-clip.

[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 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. & cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp), f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert. ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; DFW 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; DFW 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05

Adm. Order No.: DFW 82-2005(Temp)

Filed with Sec. of State: 7-29-2005

Certified to be Effective: 8-1-05 thru 12-31-05

Notice Publication Date:

Rules Amended: 635-004-0033

Rules Suspended: 635-004-0033(T)

Subject: Amend rule to reduce the two month commercial limited entry trip limit for the black rockfish and blue rockfish (combined) component of nearshore rockfish from 1,500 lbs to 700 lbs, and to decrease the two month nearshore commercial limited entry trip limit for greenling from 225 lbs to 175 lbs.

Rules Coordinator: Katie Thiel—(503) 947-6033

ADMINISTRATIVE RULES

635-004-0033

Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

- (a) Minor Nearshore Rockfish
- (b) Minor Shelf Rockfish (excluding tiger rockfish and vermilion rockfish)
- (c) Minor Slope Rockfish
- (d) Black Rockfish
- (e) Blue Rockfish
- (f) Cabezon
- (g) Canary Rockfish
- (h) Greenling
- (i) Tiger Rockfish
- (j) Vermilion Rockfish
- (k) Widow Rockfish
- (l) Yelloweye Rockfish
- (m) Yellowtail Rockfish
- (n) Darkblotched Rockfish
- (o) Pacific Ocean Perch
- (p) Longspine Thornyhead
- (q) Shortspine Thornyhead
- (r) Arrowtooth Flounder
- (s) Dover Sole
- (t) Petrale Sole
- (u) Rex Sole
- (v) Other Flatfish
- (w) Lingcod
- (x) Sablefish
- (y) Pacific Whiting

(2) For the purpose of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year. For 2005, the commercial harvest caps are:

(a) Black rockfish and blue rockfish combined of 108.7 metric tons, of which no more than 104.8 metric tons may be black rockfish.

(b) Other nearshore rockfish, 12.0 metric tons.

(c) Cabezon, 31.3 metric tons.

(d) Greenling, 23.4 metric tons.

(3) For Oregon the following commercial limits apply for 2005:

(a) No vessel may land more than 2,000 pounds of cabezon or 175 pounds of greenling during any cumulative catch period described in subsection 635-004-0033(4);

(b) No vessel may land more than 325 pounds of nearshore rockfish species other than black rockfish or blue rockfish during any cumulative catch period described in subsection 635-004-0033(4);

(c) No vessel may land more than 1,000 pounds of nearshore rockfish for commercial purposes during cumulative catch periods January 1 – February 28 or March 1 – April 30;

(d) No vessel may land more than 1,500 pounds of nearshore rockfish for commercial purposes during the cumulative catch period May 1 – June 30;

(e) No vessel may land more than 700 pounds of nearshore rockfish for commercial purposes during the cumulative catch period July 1 – August 31;

(f) No vessel may land more than 800 pounds of nearshore rockfish for commercial purposes during cumulative catch period September 1 – October 31; and

(g) No vessel may land more than 500 pounds of nearshore rockfish for commercial purposes during cumulative catch period November 1 – December 31.

(4) The cumulative catch periods are: January 1 – February 28 (29); March 1 – April 30; May 1 – June 30; July 1 – August 31; September 1 – October 31; and November 1 – December 31.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f.

11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 14-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 12-31-05

Adm. Order No.: DFW 83-2005(Temp)

Filed with Sec. of State: 7-29-2005

Certified to be Effective: 8-1-05 thru 10-31-05

Notice Publication Date:

Rules Amended: 635-018-0090

Rules Suspended: 635-018-0090(T)

Subject: Amend rule to allow the sport harvest of fall chinook in the Deschutes River.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-018-0090

Inclusions and Modifications

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) The Deschutes River from the mouth at the 1-84 Bridge upstream to Sherars Falls and the Hood River from the mouth to the Powerdale Dam are open to the retention of adipose fin-clipped chinook salmon April 15 to July 31, 2005.

(a) The catch limit is two adult adipose fin-clipped salmon per day and five adipose fin-clipped jack salmon per day.

(b) All nonadipose fin-clipped salmon must be released unharmed.

(c) It is unlawful to continue to angle for jack salmon, steelhead or trout between Sherars Falls and the upper railroad trestle (three miles) after taking a daily bag limit of adult chinook salmon.

(3) The Deschutes River is closed to the retention of adipose fin-clipped chinook salmon effective 11:59 p.m. May 15, 2005.

(4) The Deschutes River from the mouth upstream to Sherars Falls is open to the retention of chinook salmon August 1 – October 31.

(5) The catch limit is two adult salmon per day and five jack salmon per day.

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. 11-1-95; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp) f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 7-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04, Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05

ADMINISTRATIVE RULES

Adm. Order No.: DFW 84-2005(Temp)

Filed with Sec. of State: 8-1-2005

Certified to be Effective: 8-1-05 thru 12-31-05

Notice Publication Date:

Rules Amended: 635-018-0090, 635-023-0130

Rules Suspended: 635-018-0090(T)

Subject: Amend rules to comply with the Federal Endangered Species Act.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-018-0090

Inclusions and Modifications

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) The Deschutes River from the mouth at the I-84 Bridge upstream to Sherars Falls and the Hood River from the mouth to the Powerdale Dam are open to the retention of adipose fin-clipped chinook salmon April 15 to July 31, 2005.

(a) The catch limit is two adult adipose fin-clipped salmon per day and five adipose fin-clipped jack salmon per day.

(b) All nonadipose fin-clipped salmon must be released unharmed.

(c) It is *unlawful* to continue to angle for jack salmon, steelhead or trout between Sherars Falls and the upper railroad trestle (three miles) after taking a daily bag limit of adult chinook salmon.

(3) The Deschutes River is closed to the retention of adipose fin-clipped chinook salmon effective 11:59 p.m. May 15, 2005.

(4) The Deschutes River from the mouth upstream to Sherars Falls is open to the retention of chinook salmon August 1 – October 31.

(5) The catch limit is two adult salmon per day and five jack salmon per day.

(6) Hood River from the mouth upstream to the Powerdale Dam, River Mile 4, is open for adipose fin-clipped coho effective August 1 through December 31, 2005. All non-adipose fin-clipped coho salmon must be released immediately unharmed.

(7) Eagle Creek upstream from the mainline railroad bridge is open for adipose fin-clipped coho salmon effective August 1 through August 15, 2005. All non-adipose fin-clipped coho salmon must be released immediately unharmed.

(8) Herman Creek upstream from the mainline railroad bridge is open for adipose fin-clipped coho salmon effective August 1 through August 15, 2005, and again from December 1 through December 31, 2005. All non-adipose fin-clipped coho salmon must be released immediately unharmed.

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04, Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05

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.

(4) Eagle Creek upstream to the mainline railroad bridge is open for adipose fin-clipped coho salmon effective August 1 through December 31, 2005. All non-adipose fin-clipped coho salmon must be released immediately unharmed.

(5) Herman Creek upstream to the main line railroad bridge is open for adipose fin-clipped coho effective August 1 through August 15, 2005, and again from December 1 through December 31, 2005. The area west of the peninsula up to the Lower Herman Creek Pond structure is open for adipose fin-clipped coho August 1 through December 31, 2005. All non-adipose fin-clipped coho salmon must be released immediately unharmed.

[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; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05

Adm. Order No.: DFW 85-2005(Temp)

Filed with Sec. of State: 8-1-2005

Certified to be Effective: 8-3-05 thru 12-31-05

Notice Publication Date:

Rules Amended: 635-042-0031, 635-042-0145, 635-042-0160, 635-042-0170, 635-042-0180, 635-042-0190

Rules Suspended: 635-042-0145(T), 635-042-0160(T), 635-042-0180(T)

Subject: Amend rules to establish fall commercial fisheries in the Columbia River mainstem and Select Areas. Modifications are consistent with action taken by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0031

Early Fall Salmon Season

(1) Salmon and sturgeon may be taken for commercial purposes in the waters of the Columbia River, Zones 1-5, as identified in OAR 635-042-0001.

(2) The Grays River, Elokomina-A, Cowlitz River, Kalama-A, Lewis-A, Washougal and Sandy River sanctuaries are in effect.

(3) Open fishing periods are:

(a) 7:00 p.m. August 4 to 7:00 a.m. August 5, 2005;

(b) 7:00 p.m. August 7 to 7:00 a.m. August 8, 2005;

(c) 7:00 p.m. August 9 to 7:00 a.m. August 10, 2005;

(d) 7:00 p.m. August 11 to 7:00 a.m. August 12, 2005.

(4) Gear is restricted to gill nets with an 8-inch minimum mesh size and 9 3/4-inch maximum mesh size.

(5) A maximum of five green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (3), the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 496.118, 506.109 & 506.129

Stats. Implemented: ORS 506.119 & 507.030

Hist.: FWC 63-1987, f. & cert. ef. 8-7-87; FWC 67-1988, f. & cert. ef. 8-15-88; FWC 68-1988(Temp), f. & cert. ef. 8-15-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 56-1989(Temp), f. & cert. ef. 8-11-89; FWC 58-1989(Temp), f. & cert. ef. 8-14-89; FWC 80-1989(Temp), f. & cert. ef. 8-28-89; FWC 80-1990(Temp), f. 8-7-90, cert. ef. 8-8-90; FWC 85-1991, f. 8-7-91, cert. ef. 8-12-91; FWC 91-1991(Temp), f. & cert. ef. 8-29-91; FWC 73-1992(Temp), f. & cert. ef. 8-10-92; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 53-1996(Temp), f. & cert. ef. 9-16-96; FWC 49-1997, f. 8-20-97, cert. ef. 8-24-97; DFW 74-1998(Temp), f. & cert. ef. 8-25-98 thru 8-26-98; DFW 59-1999(Temp), f. & cert. ef. 8-23-99 thru 9-11-99; DFW 75-1999(Temp), f. 9-29-99, cert. ef. 9-30-99 thru 10-22-99; Administrative correction 11-17-99; DFW 50-2000(Temp), f. 8-18-00, cert. ef. 8-21-00 thru

ADMINISTRATIVE RULES

9-9-00; DFW 52-2000(Temp), f. 8-23-00, cert. ef. 8-23-00 thru 8-24-00; Administrative correction 6-20-01; DFW 68-2001(Temp), f. 8-7-01, cert. ef. 8-8-01 thru 8-9-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 79-2001(Temp), f. & cert. ef. 8-22-01 thru 12-31-01; DFW 80-2001(Temp), f. & cert. ef. 8-24-01 thru 12-31-01; DFW 86-2001(Temp), f. & cert. ef. 9-4-01 thru 12-31-01; DFW 81-2002(Temp), f. 8-2-02, cert. ef. 8-4-02 thru 8-9-02; DFW 87-2002(Temp), f. & cert. ef. 8-9-02 thru 8-12-02; DFW 89-2002(Temp), f. 8-16-02, cert. ef. 8-18-02 thru 12-31-02; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 77-2003(Temp), f. & cert. ef. 8-13-03 thru 12-31-03; DFW 82-2003(Temp), f. & cert. ef. 8-25-03 thru 12-31-03; DFW 87-2003(Temp), f. & cert. ef. 8-27-03 thru 12-31-03; DFW 81-2004(Temp), f. & cert. ef. 8-12-04 thru 12-31-04; DFW 82-2004(Temp), f. & cert. ef. 8-16-04 thru 12-31-04; DFW 86-2004 (Temp), f. 8-19-04 thru 12-31-04; DFW 88-2004(Temp), f. & cert. ef. 8-23-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05

635-042-0145

Youngs Bay Salmon Season

(1) Salmon and sturgeon may be taken for commercial purposes in those waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at Battle Creek Slough; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(2) Open fishing periods are:

- (a) 6:00 a.m. August 3 to 6:00 p.m. August 4, 2005;
- (b) 6:00 a.m. August 10 to 6:00 p.m. August 11, 2005;
- (c) 6:00 a.m. August 17 to 12:00 Noon August 18, 2005;
- (d) 6:00 a.m. August 24 to 12:00 Noon August 25, 2005;
- (e) 6:00 a.m. August 30 to 6:00 a.m. September 2, 2005;
- (f) 12:00 Noon September 6 to 12:00 Noon October 31, 2005;

(3) Gill nets may not exceed 1, 500 feet (250 fathoms) in length and weight on the leadline may not exceed two pounds per any fathom. Gear is restricted to an 8-inch maximum mesh size from August 3 through August 25, 2005. After which, gear is restricted to a 6-inch maximum mesh size from August 30 through October 31, 2005.

(4) A maximum of five green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (2), the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05

635-042-0160

Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon and sturgeon may be taken for commercial purposes in those waters of Blind Slough and Knappa Slough.

(a) The Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately one-half mile upstream of the county road bridge downstream to markers at the mouth of Blind Slough.

(b) Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to boundary lines defined by markers on the western end of Minaker Island to markers on Karlson Island and the Oregon shore. An area closure encompassing a 100-foot radius at the mouth of Big Creek is defined by markers.

(2) Open fishing periods are nightly 7:00 p.m. to 7:00 a.m.:

- (a) August 30 – September 2, 2005;
- (b) September 6 – September 9, 2005;
- (c) September 12 – September 16, 2005;
- (d) September 19 – September 23, 2005.

(3) Open fishing periods are nightly 6:00 p.m. to 8:00 a.m.:

- (a) September 26 – September 30, 2005;
- (b) October 3 – October 7, 2005;
- (c) October 10 – October 14, 2005;
- (d) October 17 – October 21, 2005;
- (e) October 24 – October 28, 2005.

(4) Gill nets may not exceed 100 fathoms in length with no weight limit on the leadline. The attachment of additional weight and anchors directly to the lead line is permitted. Gear is restricted to gill nets with a 6-inch maximum mesh size.

(5) A maximum of five green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (2) and (3), the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp) f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05

635-042-0170

Tongue Point Basin and South Channel

(1) Tongue Point fishing area includes waters bounded by a line from a yellow marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the north-west tip of Lois Island and a line from a marker on the southwest end of Lois Island due westerly to a marker on the Oregon shore.

(2) South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the terminus of South Channel.

(3) Salmon and sturgeon may be taken for commercial purposes in the waters of Tongue Point and South Channel as defined in section (1) and section (2) of this rule.

ADMINISTRATIVE RULES

- (4) Open fishing periods are nightly 7:00 p.m. to 7:00 a.m.:
- (a) August 30 – September 2, 2005;
- (b) September 6 – September 9, 2005.
- (5) Open fishing periods are nightly from 4:00 p.m. to 8:00 a.m.:
- (a) September 12 – September 16, 2005;
- (b) September 19 – September 23, 2005;
- (c) September 26 – September 30, 2005;
- (d) October 3 – October 7, 2005;
- (e) October 10 – October 14, 2005;
- (f) October 17 – October 21, 2005;
- (g) October 24 – October 28, 2005.
- (6) Gear restrictions are as follows:

(a) In waters described in section (1) as Tongue Point basin, gillnets may not exceed 250 fathoms in length and weight limit on the lead line is not to exceed two pounds on any one fathom. Gear is restricted to gill nets with a 6-inch maximum mesh size. While fishing during the seasons described in this rule, gillnets with lead line in excess of two pounds per fathom may be stored on boats.

(b) In waters described in section (2) as South Channel, nets are restricted to 100 fathoms in length with no weight restrictions on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Gear is restricted to gill nets with a 6-inch maximum mesh size. While fishing during the seasons described in this rule, gillnets up to 250 fathoms in length may be stored on boats.

(7) A maximum of five green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (4) and (5), the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 41-1998(Temp), f. 5-28-98, cert. ef. 5-29-98; DFW 42-1998(Temp), f. 5-29-98, cert. ef. 5-31-98 thru 6-6-98; DFW 45-1998(Temp), f. 6-5-98, cert. ef. 6-6-98 thru 6-10-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998, f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; Administrative Correction 7-30-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon and sturgeon may be taken for commercial purposes in those waters of Deep River. The Deep River fishing area includes all waters downstream of the town of Deep River to the mouth defined by a line from U.S. Coast Guard navigation marker #16 southwest to a marker on the Washington shore.

- (2) Open fishing periods are nightly 7:00 p.m. to 7:00 a.m.:
- (a) August 30 – September 2, 2005;
- (b) September 6 – September 9, 2005;
- (3) Open fishing periods are nightly 4:00 p.m. to 8:00 a.m.:
- (a) September 12 – September 16, 2005;
- (b) September 19 – September 23, 2005;
- (c) September 26 – September 30, 2005;
- (d) October 3 – October 7, 2005;
- (e) October 10 – October 14, 2005;
- (f) October 17 – October 21, 2005;
- (g) October 24 – October 28, 2005.

(4) Gill nets may not exceed 100 fathoms in length with no weight limit on the leadline. The attachment of additional weight and anchors directly to the lead line is permitted. Gear is restricted to gill nets with a 6-inch maximum mesh size. Nets are not allowed to be tied off to any stationary structures nor are they allowed to fully cross the navigation channel.

(5) A maximum of five green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (2) and (3), the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05

635-042-0190

Steamboat Slough

(1) Salmon and sturgeon may be taken for commercial purposes in those waters of Steamboat Slough. Steamboat Slough includes all waters bounded by markers on Price Island and the Washington shore at both ends of Steamboat Slough.

(2) Open fishing periods are nightly 7:00 p.m. to 7:00 a.m.:

- (a) August 30 – September 2, 2005;
- (b) September 6 – September 9, 2005;
- (c) September 12 – September 16, 2005;
- (d) September 19 – September 23, 2005.

(3) Open fishing periods are nightly 6:00 p.m. to 8:00 a.m.:

- (a) September 26 – September 30, 2005;
- (b) October 3 – October 7, 2005;
- (c) October 10 – October 14, 2005;
- (d) October 17 – October 21, 2005;
- (e) October 24 – October 28, 2005.

(4) Gill nets may not exceed 100 fathoms in length with no weight limit on the leadline. The attachment of additional weight and anchors directly to the lead line is permitted. Gear is restricted to gill nets with a 6-inch maximum mesh size.

(5) A maximum of five green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (2) and (3), the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; Administrative correction 7-30-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05

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Adm. Order No.: DFW 86-2005(Temp)

Filed with Sec. of State: 8-3-2005

Certified to be Effective: 8-3-05 thru 12-31-05

Notice Publication Date:

Rules Amended: 635-004-0033

Rules Suspended: 635-004-0033(T)

Subject: Amend rule to reduce the two month commercial limited entry trip limit for the black rockfish and blue rockfish (combined) from 1,500 lbs to 700 lbs.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-004-0033

Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

- (a) Minor Nearshore Rockfish;
- (b) Minor Shelf Rockfish (excluding tiger rockfish and vermilion rockfish);
- (c) Minor Slope Rockfish;
- (d) Black Rockfish;

ADMINISTRATIVE RULES

- (e) Blue Rockfish;
- (f) Cabezon;
- (g) Canary Rockfish;
- (h) Greenling;
- (i) Tiger Rockfish;
- (j) Vermilion Rockfish;
- (k) Widow Rockfish;
- (l) Yelloweye Rockfish;
- (m) Yellowtail Rockfish;
- (n) Darkblotched Rockfish;
- (o) Pacific Ocean Perch;
- (p) Longspine Thornyhead;
- (q) Shortspine Thornyhead;
- (r) Arrowtooth Flounder;
- (s) Dover Sole;
- (t) Petrale Sole;
- (u) Rex Sole;
- (v) Other Flatfish;
- (w) Lingcod;
- (x) Sablefish;
- (y) Pacific Whiting.

(2) For the purpose of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year. For 2005, the commercial harvest caps are:

(a) Black rockfish and blue rockfish combined of 108.7 metric tons, of which no more than 104.8 metric tons may be black rockfish.

(b) Other nearshore rockfish, 12.0 metric tons.

(c) Cabezon, 31.3 metric tons.

(d) Greenling, 23.4 metric tons.

(3) For Oregon the following commercial limits apply for 2005:

(a) No vessel may land more than 2,000 pounds of cabezon or 175 pounds of greenling during any cumulative catch period described in subsection 635-004-0033(4);

(b) No vessel may land more than 325 pounds of nearshore rockfish species other than black rockfish or blue rockfish during any cumulative catch period described in subsection 635-004-0033(4);

(c) No vessel may land more than 1,000 pounds of nearshore rockfish for commercial purposes during cumulative catch periods January 1–February 28 or March 1–April 30;

(d) No vessel may land more than 1,500 pounds of nearshore rockfish for commercial purposes during the cumulative catch period May 1–June 30;

(e) No vessel may land more than 700 pounds, in the aggregate, of black or blue rockfish for commercial purposes during the cumulative catch period July 1–August 31;

(f) No vessel may land more than 700 pounds of nearshore rockfish for commercial purposes during cumulative catch period September 1–October 31; and

(g) No vessel may land more than 500 pounds of nearshore rockfish for commercial purposes during cumulative catch period November 1–December 31.

(4) The cumulative catch periods are: January 1–February 28 (29); March 1–April 30; May 1–June 30; July 1–August 31; September 1–October 31; and November 1–December 31.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-

13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 12-31-05; DFW 86-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-05

Adm. Order No.: DFW 87-2005(Temp)

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

Certified to be Effective: 8-11-05 thru 12-31-05

Notice Publication Date:

Rules Amended: 635-039-0090

Rules Suspended: 635-039-0090(T)

Subject: Amend rule to close sport harvest of cabezon in the ocean and estuary boat fisheries due to attainment of Oregon Fish and Wildlife Commission 2005 harvest cap.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-039-0090

Inclusions and Modifications

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "harvest target" is defined as the Oregon share of the regional recreational harvest guideline for yelloweye rockfish, canary rockfish or lingcod that may be harvested by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2005 are specified in the Pacific Council News, and to the extent they are consistent with these rules, in Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996, as amended to incorporate the standards in the Pacific Council News).

(b) Harvest targets for yelloweye rockfish, canary rockfish and lingcod effective at the start of the Oregon sport fishery in 2005 are:

(A) Yelloweye rockfish, 3.2 metric tons.

(B) Canary rockfish, 6.8 metric tons.

(C) Lingcod, 151 metric tons.

(c) Harvest targets for yelloweye rockfish, canary rockfish and lingcod may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3) For the purposes of this rule, the Oregon recreational harvest guideline for widow rockfish is 2.4 metric tons.

(4) For the purposes of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2005 the sport harvest caps are:

(a) Black rockfish and blue rockfish combined of 372.5 metric tons, of which no more than 332 metric tons may be black rockfish.

(b) Other nearshore rockfish, 11.4 metric tons.

(c) Cabezon, 15.8 metric tons.

(d) Greenling, 5.2 metric tons.

(5) Effective August 11, 2005, retention of cabezon, as identified in (4)(c) is prohibited in the ocean and estuary boat fisheries. Angling for and retention of shore-based cabezon is permitted.

(6) In addition to the regulations for Marine Fish in the 2005 Oregon Sport Fishing Regulations, the following apply for the sport fishery in the Marine Zone in 2005:

(a) Lingcod (including green colored lingcod): 2 fish daily catch limit.

(b) Rockfish ("sea bass," "snapper"), greenling ("sea trout"), flounder (excluding Pacific halibut), sole, cabezon and other marine fish species not listed in the 2005 Sport Fishing Regulations in the Marine Zone, located under the category of Species Name, Marine Fish: 5 fish daily catch limit in aggregate (total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) When allowed by federal groundfish regulations, retention of all marine fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species, is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut in the central coast fishery between Cape Falcon and Humbug Mountain. Persons must also consult the Pacific Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E

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(61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as published by IPHC to determine all rules applicable to the taking of halibut.

(d) When allowed by federal groundfish regulations, landing of all marine fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species, is prohibited when Pacific halibut is retained on the vessel during open days for the Columbia River sport fishery for Pacific halibut north of Cape Falcon. Persons must also consult the Pacific Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as published by IPHC to determine all rules applicable to the taking of halibut.

(e) Harvest methods and other specifications for marine fish in subsections (6)(a) and (b) including the following:

(A) Minimum length for lingcod, 24 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (6)(a) and (b) are open January 1 through December 31, 24 hours per day, except that ocean waters are closed for these species during June 1 through September 30, outside of the 40-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 391 subsection (h).

[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 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, f. 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05

Adm. Order No.: DFW 88-2005(Temp)

Filed with Sec. of State: 8-11-2005

Certified to be Effective: 8-14-05 thru 12-31-05

Notice Publication Date:

Rules Amended: 635-042-0031

Rules Suspended: 635-042-0031(T)

Subject: Amend rule to extend the fall commercial salmon fishery in the Columbia River mainstem. Modification is consistent with action taken by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0031

Early Fall Salmon Season

(1) Salmon and sturgeon may be taken for commercial purposes in the waters of the Columbia River, Zones 1-5, as identified in OAR 635-042-0001.

(2) The Grays River, Elokomina-A, Cowlitz River, Kalama-A, Lewis-A, Washougal and Sandy River sanctuaries are in effect.

(3) Open fishing periods are:

(a) 7:00 p.m. August 4 to 7:00 a.m. August 5, 2005;

(b) 7:00 p.m. August 7 to 7:00 a.m. August 8, 2005;

(c) 7:00 p.m. August 9 to 7:00 a.m. August 10, 2005;

(d) 7:00 p.m. August 11 to 7:00 a.m. August 12, 2005;

(4) Salmon and sturgeon may be taken for commercial purposes in the waters of the Columbia River, Zones 2-5, as identified in OAR 635-042-0001. Sanctuaries identified in (2) are in effect.

(5) The open fishing period is 7:00 p.m. August 14 to 7:00 a.m. August 15, 2005.

(6) Gear is restricted to gill nets with an 8-inch minimum mesh size and 9 3/4-inch maximum mesh size.

(7) A maximum of five green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (3) and (5), the weekly aggregate sturgeon limit applies to possession and sales in the Columbia River mainstem fishery, the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 496.118, 506.109 & 506.129

Stats. Implemented: ORS 506.119 & 507.030

Hist.: FWC 63-1987, f. & cert. ef. 8-7-87; FWC 67-1988, f. & cert. ef. 8-15-88; FWC 1988(Temp), f. & cert. ef. 8-15-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 56-1989(Temp), f. & cert. ef. 8-11-89; FWC 58-1989(Temp), f. & cert. ef. 8-14-89; FWC 80-1989(Temp), f. & cert. ef. 8-28-89, cert. ef. 8-29-89; FWC 80-1990(Temp), f. & cert. ef. 8-8-90; FWC 85-1991, f. & cert. ef. 8-7-91, cert. ef. 8-12-91; FWC 91-1991(Temp), f. & cert. ef. 8-29-91; FWC 73-1992(Temp), f. & cert. ef. 8-10-92; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 53-1996(Temp), f. & cert. ef. 9-16-96; FWC 49-1997, f. & cert. ef. 8-24-97; DFW 74-1998(Temp), f. & cert. ef. 8-25-98 thru 8-26-98; DFW 59-1999(Temp), f. & cert. ef. 8-23-99 thru 9-11-99; DFW 75-1999(Temp), f. 9-29-99, cert. ef. 9-30-99 thru 10-22-99; Administrative correction 11-17-99; DFW 50-2000(Temp), f. 8-18-00, cert. ef. 8-21-00 thru 9-9-00; DFW 52-2000(Temp), f. 8-23-00, cert. ef. 8-23-00 thru 8-24-00; Administrative correction 6-20-01; DFW 68-2001(Temp), f. 8-7-01, cert. ef. 8-8-01 thru 8-9-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 79-2001(Temp), f. & cert. ef. 8-22-01 thru 12-31-01; DFW 80-2001(Temp), f. & cert. ef. 8-24-01 thru 12-31-01; DFW 86-2001(Temp), f. & cert. ef. 9-4-01 thru 12-31-01; DFW 81-2002(Temp), f. 8-2-02, cert. ef. 8-4-02 thru 8-9-02; DFW 87-2002(Temp), f. & cert. ef. 8-9-02 thru 8-12-02; DFW 89-2002(Temp), f. 8-16-02, cert. ef. 8-18-02 thru 12-31-02; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 77-2003(Temp), f. & cert. ef. 8-13-03 thru 12-31-03; DFW 82-2003(Temp), f. & cert. ef. 8-25-03 thru 12-31-03; DFW 87-2003(Temp), f. & cert. ef. 8-27-03 thru 12-31-03; DFW 81-2004(Temp), f. & cert. ef. 8-12-04 thru 12-31-04; DFW 82-2004(Temp), f. & cert. ef. 8-16-04 thru 12-31-04; DFW 86-2004(Temp), f. 8-19-04 thru 12-31-04; DFW 88-2004(Temp), f. & cert. ef. 8-23-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 88-2005(Temp), f. 8-11-05, cert. ef. 8-14-05 thru 12-31-05

Adm. Order No.: DFW 89-2005(Temp)

Filed with Sec. of State: 8-12-2005

Certified to be Effective: 8-12-05 thru 12-12-05

Notice Publication Date:

Rules Amended: 635-039-0080, 635-039-0085

Rules Suspended: 635-039-0080(T)

Subject: Amend rules to expand the 2005 recreational fishery for Pacific halibut as implemented by the International Pacific Halibut Commission for the area between Cape Falcon and Humbug Mountain and perform a housekeeping correction of the rule placement of season notifications within the administrative structure.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-039-0080

Purpose and Scope

(1) The purpose of division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2005 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2005 Oregon Sport Fishing Regulations** in addition to division 011 and division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

(b) The Pacific Council Decisions document dated November 2004 (copy available from agency); and to the extent consistent with that document, Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); Federal Regulations, Vol. 70, No. 74, dated April 19, 2005; and the annual **Pacific Halibut Fishery Regulations** to determine regulations applicable to this fishery.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05

ADMINISTRATIVE RULES

635-039-0085

Halibut Seasons

(1) The Pacific halibut sport fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR chapter 635, division 039 incorporates into Oregon Administrative Rules, by reference, modifications or additions to provisions determined by the Commission and to the extent they are consistent with **Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996)**; Volume 70, Number 37, dated February 25, 2005; Federal Regulations, Vol. 70, No. 74, dated April 19, 2005 and the annual Pacific Halibut Fishery Regulations to determine regulations applicable to this fishery.

(2) Effective 11:59 p.m., Sunday, June 12, 2005 the Columbia River sub-area (Cape Falcon, OR to Leadbetter Pt., WA) will close to the retention of Pacific halibut.

(3) The sport fishery between Cape Falcon and Humbug Mountain is open weekends, Friday through Sunday, effective August 12, 2005, to the retention of Pacific halibut.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119, 506.129
Stats. Implemented: ORS 496.162, 506.129
Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05

Department of Forestry Chapter 629

Adm. Order No.: DOF 6-2005(Temp)

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

Certified to be Effective: 8-2-05 thru 1-27-06

Notice Publication Date:

Rules Adopted: 629-605-0173

Rules Amended: 629-001-0010, 629-001-0025, 629-600-0100, 629-605-0100, 629-605-0150, 629-605-0170, 629-605-0175, 629-605-0180, 629-605-0190, 629-605-0500, 629-610-0020, 629-610-0030, 629-610-0040, 629-610-0050, 629-610-0060, 629-610-0070, 629-610-0090, 629-615-0300, 629-623-0450, 629-623-0550, 629-623-0700, 629-625-0100, 629-625-0320, 629-625-0430, 629-630-0200, 629-630-0600, 629-630-0700, 629-630-0800, 629-635-0130, 629-640-0100, 629-640-0110, 629-640-0200, 629-640-0400, 629-645-0000, 629-645-0020, 629-645-0030, 629-645-0050, 629-650-0040, 629-660-0040, 629-660-0050, 629-665-0020, 629-665-0110, 629-665-0120, 629-665-0210, 629-665-0220, 629-665-0230, 629-665-0240, 629-670-0010, 629-670-0015, 629-670-0100, 629-670-0115, 629-670-0125, 629-670-0210, 629-672-0100, 629-672-0200, 629-672-0210, 629-672-0310, 629-674-0100

Rules Suspended: 629-672-0220

Subject: The revision of the forest practice rules will comply with 2003 HB 3264 by removing requirements for prior approval and approval of written plans while maintaining resource protection. The revised rules effectively and efficiently implement the regulatory elements of the Forest Practices Act to maintain one-stop shopping and minimize program compliance costs.

Rules Coordinator: Gayle Birch—(503) 945-7210

629-001-0010

Agency Representation by Officer or Employee

(1) Department of Forestry officer or employee is authorized to appear (but not make legal argument) on behalf of the department in a hearing or in a class of contested hearings in which the Attorney General or the Deputy Attorney General has given written consent for such representation. A copy of the list of contested case hearings for which the Attorney General has given consent is maintained by the Department of Forestry and the Department of Justice.

(2) "Legal argument" as used in ORS 183.450(8) and this rule shall include arguments on:

- (a) The jurisdiction of the agency to hear the contested case;
- (b) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;
- (c) The application of court precedent to the facts of the particular contested case proceeding.

(3) "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(a) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(b) Comparison of prior actions of the agency in handling similar situations;

(c) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(d) The admissibility of evidence or the correctness of procedures being followed.

(4) When an agency officer or employee represents the agency, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 183 & 526

Stats. Implemented: ORS 183 & 526

Hist.: FB 1-1990, f. & cert. ef. 3-15-90; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-001-0025

Conduct of Hearings

(1) Unless otherwise provided by law or order of the board or State Forester in a specific case, contested case hearings will be conducted by an administrative law judge, who shall prepare a proposed order for consideration by the board or State Forester.

(2) Unaccepted proposals of settlement shall be privileged and shall not be admissible as evidence in the proceeding.

(3) In civil penalty proceedings, conferences and hearings shall be held at locations which are within the forest practices region of the person being assessed the penalty, unless otherwise agreed to by the State Forester and parties.

(4) The issues for hearing shall be limited to those raised by the parties or by the State Forester in a request for hearing or other pre-hearing filings.

(5) Timing of hearings and orders are stated as follows, unless all parties agree to an extension of the time limits:

(a) For appeals from orders of the State Forester under ORS 527.700(1), hearings shall be commenced within 14 days after receipt of the request for hearing, and a final order shall be issued within 28 days of the request for hearing.

(b) For appeals by persons adversely affected or aggrieved by an operation under ORS 527.700(3), hearings shall be commenced within 21 calendar days after receipt of the request for hearing. A final order shall be issued within 45 days after the request for hearing was filed.

(c) For appeals by persons adversely affected or aggrieved by a proposed or amended stewardship agreement, hearings shall be commenced within 45 calendar days after receipt of the request for hearing. A final order shall be issued within 45 calendar days of the concluded hearing.

(d) Hearings on notices of civil penalty under ORS 527.687 shall not be held less than 45 days from the date of service of the notice of penalty. The hearing shall be held not more than 180 days following issuance of the notice.

(6) In order to comply with statutory timelines, the administrative law judge may establish time limits different from those under OAR 137-003-0580 for making and responding to motions for ruling on legal issues. The administrative law judge shall not consider a motion for ruling on a legal issue if the agency requests that the case proceed to a hearing on that issue.

Stat. Auth.: ORS 526.016(4), 527.687(3) & 527.715

Stats. Implemented: ORS 183.310 - 183.550

Hist.: DOF 5-2002, f. & cert. ef. 7-1-02; DOF 2-2004, f. & cert. ef. 2-10-04; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-600-0100

Definitions

As used in OAR chapter 629, divisions 605 through 669 and divisions 680 through 699, unless otherwise required by context:

(1) "Abandoned resource site" means a resource site that the State Forester determines is not active.

(2) "Active resource site" means a resource site that the State Forester determines has been used in the recent past by a listed species. 'Recent past' shall be identified for each species in administrative rule. Resource sites that are lost or rendered not viable by natural causes are not considered active.

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(3) "Active roads" are roads currently being used or maintained for the purpose of removing commercial forest products.

(4) "Aquatic area" means the wetted area of streams, lakes and wetlands up to the high water level. Oxbows and side channels are included if they are part of the flow channel or contain fresh water ponds.

(5) "Artificial reforestation" means restocking a site by planting trees or through the manual or mechanical distribution of seeds.

(6) "Basal area" means the area of the cross-section of a tree stem derived from DBH.

(7) "Basal area credit" means the credit given towards meeting the live tree requirements within riparian management areas for placing material such as logs, rocks or rootwads in a stream, or conducting other enhancement activities such as side channel creation or grazing enclosures.

(8) "Bog" means a wetland that is characterized by the formation of peat soils and that supports specialized plant communities. A bog is a hydrologically closed system without flowing water. It is usually saturated, relatively acidic, and dominated by ground mosses, especially sphagnum. A bog may be forested or non-forested and is distinguished from a swamp and a marsh by the dominance of mosses and the presence of extensive peat deposits.

(9) "Channel" is a distinct bed or banks scoured by water which serves to confine water and that periodically or continually contains flowing water.

(10) "Chemicals" means and includes all classes of pesticides, such as herbicides, insecticides, rodenticides, fungicides, plant defoliant, plant desiccants, and plant regulators, as defined in ORS 634.006(8); fertilizers, as defined in ORS 633.310; petroleum products used as carriers; and chemical application adjuvants, such as surfactants, drift control additives, anti-foam agents, wetting agents, and spreading agents.

(11) "Commercial" means of or pertaining to the exchange or buying and selling of commodities or services. This includes any activity undertaken with the intent of generating income or profit; any activity in which a landowner, operator or timber owner receives payment from a purchaser of forest products; any activity in which an operator or timber owner receives payment or barter from a landowner for services that require notification under OAR 629-605-0140; or any activity in which the landowner, operator, or timber owner barter or exchanges forest products for goods or services. This does not include firewood cutting or timber milling for personal use.

(12) "Completion of the operation" means harvest activities have been completed to the extent that the operation area will not be further disturbed by those activities.

(13) "Conflict" means resource site abandonment or reduced resource site productivity that the State Forester determines is a result of forest practices.

(14) "Debris torrent-prone streams" are designated by the State Forester to include channels and confining slopes that drain watersheds containing high landslide hazard locations that are of sufficient confinement and channel gradient to allow shallow, rapid landslide movement.

(15) "Department" means the Oregon Department of Forestry.

(16) "Diameter breast height" (DBH) means the diameter of a tree inclusive of the bark measured four and one-half feet above the ground on the uphill side of the tree.

(17) "Domestic water use" means the use of water for human consumption and other household human use.

(18) "Dying or recently dead tree" means a tree with less than ten percent live crown or a standing tree which is dead, but has a sound root system and has not lost its small limbs. Needles or leaves may still be attached to the tree.

(19) "Estuary" means a body of water semi-enclosed by land and connected with the open ocean within which saltwater is usually diluted by freshwater derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes, and submerged lands extending upstream to the head of tidewater. However, the Columbia River Estuary extends to the western edge of Puget Island.

(20) "Exposure categories" are used to designate the likelihood of persons being present in structures or on public roads during periods when shallow, rapidly moving landslides may occur.

(21) "Filling" means the deposit by artificial means of any materials, organic or inorganic.

(22) "Fish use" means inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts.

(23) "Fledging tree" means a tree or trees close to the nest which the State Forester determines are regularly used by young birds to develop flying skills.

(24) "Foraging area" means an area (usually a body of water) where bald eagles concentrate their hunting activities.

(25) "Foraging perch" means a tree or other structure that overlooks a portion of a foraging area and is habitually used by bald eagles as a vantage point while hunting.

(26) "Forestland" means land which is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(27) "Free to grow" means the State Forester's determination that a tree or a stand of well distributed trees, of acceptable species and good form, has a high probability of remaining or becoming vigorous, healthy, and dominant over undesired competing vegetation. For the purpose of this definition, trees are considered well distributed if 80 percent or more of the portion of the operation area subject to the reforestation requirements of the rules contains at least the minimum per acre tree stocking required by the rules for the site and not more than ten percent contains less than one-half of the minimum per acre tree stocking required by the rules for the site.

(28) "Further review area" means an area of land that may be subject to rapidly moving landslides as mapped by the State Department of Geology and Mineral Industries or as otherwise determined by the State Forester.

(29) "Geographic region" means large areas where similar combinations of climate, geomorphology, and potential natural vegetation occur, established for the purposes of implementing the water protection rules.

(30) "High landslide hazard location" means a specific site that is subject to initiation of a shallow, rapidly moving landslide.

(31) "High water level" means the stage reached during the average annual high flow. The "high water level" often corresponds with the edge of streamside terraces, a change in vegetation, or a change in soil or litter characteristics.

(32) "Hydrologic function" means soil, stream, wetland and riparian area properties related to the storage, timing, distribution, and circulation of water.

(33) "Important springs" are springs in arid parts of eastern Oregon that have established wetland vegetation, flow year round in most years, are used by a concentration of diverse animal species, and by reason of sparse occurrence have a major influence on the distribution and abundance of upland species.

(34) "Inactive roads" are roads used for forest management purposes exclusive of removing commercial forest products.

(35) "Key components" means the attributes which are essential to maintain the use and productivity of a resource site over time. The key components vary by species and resource site. Examples include fledging trees or perching trees.

(36) "Lake" means a body of year-round standing open water.

(a) For the purposes of the forest practice rules, lakes include:

(A) The water itself, including any vegetation, aquatic life, or habitats therein; and

(B) Beds, banks or wetlands below the high water level which may contain water, whether or not water is actually present.

(b) "Lakes" do not include water developments as defined in section (81) of this rule.

(37) "Landslide mitigation" means actions taken to reduce potential landslide velocity or re-direct shallow, rapidly moving landslides near structures and roads so risk to persons is reduced.

(38) "Large lake" means a lake greater than eight acres in size.

(39) "Live tree" means a tree that has 10 percent or greater live crown.

(40) "Local population" means the number of birds that live within a geographical area that is identified by the State Forester. For example: the area may be defined by physical boundaries, such as a drainage or subbasin.

(41) "Main channel" means a channel that has flowing water when average flows occur.

(42) "Natural barrier to fish use" is a natural feature such as a waterfall, increase in stream gradient, channel constriction, or other natural channel blockage that prevents upstream fish passage.

(43) "Natural reforestation" means restocking a site with self-grown trees resulting from self-seeding or vegetative means.

(44) "Nest tree" means the tree, snag, or other structure that contains a bird nest.

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(45) "Nesting territory" means an area identified by the State Forester that contains, or historically contained, one or more nests of a mated pair of birds.

(46) "Operation" means any commercial activity relating to the establishment, management or harvest of forest tree species except as provided by the following:

(a) The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.

(b) The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood that is:

(A) Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;

(C) Harvested on a rotation cycle that is 12 or fewer years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.

(c) The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.

(d) The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.

(e) The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.

(f) The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.

(g) The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.

(47) "Operator" means any person, including a landowner or timber owner, who conducts an operation.

(48) "Other wetland" means a wetland that is not a significant wetland or stream-associated wetland.

(49) "Perch tree" means a tree identified by the State Forester which is used by a bird for resting, marking its territory, or as an approach to its nest.

(50) "Plan for an Alternate Practice" means a document prepared by the landowner, operator or timber owner, submitted to the State Forester for written approval describing practices different than those prescribed in statute or administrative rule.

(51) "Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity.

(52) "Removal" means the taking or movement of any amount of rock, gravel, sand, silt, or other inorganic substances.

(53) "Replacement tree" means a tree or snag within the nesting territory of a bird that is identified by the State Forester as being suitable to replace the nest tree or perch tree when these trees become unusable.

(54) "Resource site" is defined for the purposes of protection and for the purposes of requesting a hearing.

(a) For the purposes of protection:

(A) For threatened and endangered bird species, "resource site" is the nest tree, roost trees, or foraging perch and all identified key components.

(B) For sensitive bird nesting, roosting and watering sites, "resource site" is the nest tree, roost tree or mineral watering place, and all identified key components.

(C) For significant wetlands "resource site" is the wetland and the riparian management area as identified by the State Forester.

(b) For the purposes of requesting a hearing under ORS 527.670(4) and 527.700(3), "resource site" is defined in OAR 629-680-0020.

(55) "Riparian area" means the ground along a water of the state where the vegetation and microclimate are influenced by year-round or seasonal water, associated high water tables, and soils which exhibit some wetness characteristics.

(56) "Riparian management area" means an area along each side of specified waters of the state within which vegetation retention and special management practices are required for the protection of water quality, hydrologic functions, and fish and wildlife habitat.

(57) "Roosting site" means a site where birds communally rest at night and which is unique for that purpose.

(58) "Roost tree" is a tree within a roosting site that is used for night time roosting.

(59) "Saplings and poles" means live trees of acceptable species, of good form and vigor, with a DBH of one to 10 inches.

(60) "Seedlings" means live trees of acceptable species of good form and vigor less than one inch in DBH.

(61) "Shallow, rapidly moving landslide" means any detached mass of soil, rock, or debris that begins as a relatively small landslide on steep slopes and grows to a sufficient size to cause damage as it moves down a slope or a stream channel at a velocity difficult for people to outrun or escape.

(62) "Side channel" means a channel other than a main channel of a stream that only has flowing water when high water level occurs.

(63) "Significant wetlands" means those wetland types listed in OAR 629-680-0310, that require site specific protection.

(64) "Snag" means a tree which is dead but still standing, and that has lost its leaves or needles and its small limbs.

(65) "Sound snag" means a snag that retains some intact bark or limb stubs.

(66) "Staging tree" is a tree within the vicinity of a roosting site that is used for perching by bald eagles before entering the roost.

(67) "Stream" means a channel, such as a river or creek, that carries flowing surface water during some portion of the year.

(a) For the purposes of the forest practice rules, streams include:

(A) The water itself, including any vegetation, aquatic life, or habitats therein;

(B) Beds and banks below the high water level which may contain water, whether or not water is actually present;

(C) The area between the high water level of connected side channels;

(D) Beaver ponds, oxbows, and side channels if they are connected by surface flow to the stream during a portion of the year; and

(E) Stream-associated wetlands.

(b) "Streams" do not include:

(A) Ephemeral overland flow (such flow does not have a channel); or

(B) Road drainage systems or water developments as defined in section (81) of this rule.

(68) "Stream-associated wetland" means a wetland that is not classified as significant and that is next to a stream.

(69) "Structural exception" means the State Forester determines that no actions are required to protect the resource site. The entire resource site may be eliminated.

(70) "Structural protection" means the State Forester determines that actions are required to protect the resource site. Examples include retaining the nest tree or perch tree.

(71) "Temporal exception" means the State Forester determines that no actions are required to prevent disturbance to birds during the critical period of use.

(72) "Temporal protection" means the State Forester determines that actions are required to prevent disturbance to birds during the critical period of use.

(73) "Tree leaning over the channel" means a tree within a riparian management area if a portion of its bole crosses the vertical projection of the high water level of a stream.

(74) "Tye Core Area" means a location with geologic conditions including thick sandstone beds with few fractures. These sandstones weather rapidly and concentrate water in shallow soils creating a higher shallow, rapidly moving landslide hazard. The Tye Core area is located within coastal watersheds from the Siuslaw watershed south to and including the Coquille watershed, and that portion of the Umpqua watershed north of Highway 42 and west of Interstate 5. Within these boundaries, locations where bedrock is highly fractured or not of sedimentary origin as determined in the field by a geotechnical specialist are not subject to the Tye Core area slope steepness thresholds.

(75) "Type D stream" means a stream that has domestic water use, but no fish use.

(76) "Type F stream" means a stream with fish use, or both fish use and domestic water use.

(77) "Type N stream" means a stream with neither fish use nor domestic water use.

(78) "Unit" means an operation area submitted on a notification of operation that is identified on a map and that has a single continuous boundary. Unit is used to determine compliance with ORS 527.676 (down log, snag and green live tree retention), 527.740 and 527.550 (harvest type 3 size limitation), and other forest practice rules.

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(79) "Vacated roads" are roads that have been made impassable and are no longer to be used for forest management purposes or commercial forest harvesting activities.

(80) "Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation and duff so that it does not gain the volume and velocity which causes soil movement or erosion.

(81) "Water development" means water bodies developed for human purposes that are not part of a stream such as waste treatment lagoons, reservoirs for industrial use, drainage ditches, irrigation ditches, farm ponds, stock ponds, settling ponds, gravel ponds, cooling ponds, log ponds, pump chances, or heli-ponds that are maintained for the intended use by human activity.

(82) "Waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, wetlands, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(83) "Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include marshes, swamps, bogs, and similar areas. Wetlands do not include water developments as defined in section (81) of this rule.

(84) "Written plan" means a document prepared by an operator, timber owner or landowner that describes how the operation is planned to be conducted.

Stat. Auth.: ORS 527.710(11)
Stats. Implemented: ORS 527.630(5) & 527.714
Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 39, f. 7-3-74, ef. 7-25-74; FB 1-1978, f. & ef. 1-6-78; FB 5-1978, f. & ef. 6-7-78; FB 3-1983, f. & ef. 9-13-83; FB 1-1985, f. & ef. 3-12-85; FB 2-1985(Temp), f. & ef. 4-24-85; FB 2-1987, f. 5-4-87, ef. 8-1-87; FB 4-1988, f. 7-27-88, cert. ef. 9-1-88; FB 4-1990, f. & cert. ef. 7-25-90; FB 1-1991, f. & cert. ef. 5-23-91; FB 7-1991, f. & cert. ef. 10-30-91; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-024-0101; DOF 6-2002, f. & cert. ef. 7-1-02; DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-605-0100 Compliance

(1) The operator, landowner, or timber owner shall comply with the practices described in the forest practice statutes and rules unless approval has been obtained from the State Forester for a plan for an alternate practice which is designed to result in the same effect or to meet the same purpose or provide equal or better results as those practices described in statute or administrative rule.

(2) The State Forester may approve a plan for an alternate practice to waive or modify forest practice rules when:

(a) The State Forester determines that a federal or state agency, a college or university, or a private landowner has submitted an application to the State Forester for a bona fide research project involving activities not in accordance with the rules; or

(b) The State Forester determines that waiving or modifying a specific practice will result in less environmental damage than if the practice is applied; or

(c) After consulting with the Department of Fish and Wildlife or other responsible coordinating state agency, the State Forester determines that waiving or modifying a specific practice will improve soil, water quality, fish habitat, or wildlife habitat; or

(d) The State Forester determines that the alternate practice is necessary to provide for public safety or to accomplish a land use change.

(3) When the State Forester's approval does not follow the written recommendations of the Department of Fish and Wildlife or other responsible coordinating state agency, the State Forester shall maintain a written explanation of the reasons for approving the alternate practices.

(4) The State Forester may approve a plan for an alternate practice to waive or modify rules for resource sites identified in OAR 629-680-0100 (Threatened or Endangered Fish and Wildlife Species), 629-680-0200 (Sensitive Bird Nesting, Roosting and Watering Sites), 629-680-0300 (Significant Wetlands), or 629-680-0400 (Biological Sites) when:

(a) The county has an adopted program under OAR 660-016-0005 and 660-016-0010 that has evaluated the resource sites; and

(b) Applying the forest practice rules for the identified resource sites would regulate or prevent operations, or uses, allowed under the acknowledged county comprehensive plan.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.710 & 527.715
Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78; FB 2-1987, f. 5-4-87, ef. 8-1-87; FB 7-1992, f. & cert. ef. 6-5-92; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-024-0102; DOF 2-2003, f. 6-19-03, cert. ef. 7-1-03; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-605-0150

Notification to the State Forester — When, Where and How

(1) The operator, landowner or timber owner shall notify the State Forester as required by ORS 527.670(6), at least 15 days before starting an operation.

(2) The State Forester may waive the 15 day waiting period required in section (1) of this rule, except as prohibited in ORS 527.670(9) for aerial applications of chemicals and ORS 527.670(10) for operations requiring a written plan under ORS 527.670(3)(a) and (b). Waivers may be granted when the State Forester has already previewed the operation site or has otherwise determined the operation to have only minor potential for resource damage. Waivers shall be made in writing, and on an individual notification basis.

(3) Once an operation is actually started following proper notification of the State Forester, the operation may continue into the following calendar year without further notification under 527.670(6), provided:

(a) There are no changes to the information required on the notification;

(b) The operator gives written notice to the State Forester of their intent to continue the operation within the first two months of the following calendar year; and

(c) The operation actively continues within the first six months of the following calendar year.

(4) No notification is valid after the second calendar year, unless:

(a) The landowner or operator submits a written request to extend the notification before the end of the second calendar year;

(b) There are no changes to the information submitted on the original notification; and

(c) The State Forester approves the request.

(5) Notwithstanding sections (3) and (4) of this rule, nothing in this rule relieves an operator, landowner or timber owner of the responsibility to comply with ORS 477.625, requiring a permit to use fire or power-driven machinery; or ORS 321.550 requiring notification of intent to harvest provided to the Department of Revenue through the department for tax collection purposes.

(6) For the purposes of ORS 527.670 a notification will be considered received only when the information required by the State Forester is complete and the necessary forms are on file at the department district or unit office responsible for the area in which the operation will take place. Notifications not properly completed shall be promptly returned to the party submitting them. Properly completed notifications submitted to an incorrect department office will be forwarded to the correct office.

(7) Notifications required by ORS 527.670(6) shall be completed in detail, on forms provided by the State Forester. The notification shall include a map to scale, or aerial photograph that is corrected for distortion, on which the boundary of the operation unit is clearly marked. When more than one type of operation activity or more than one unit is submitted on a single notification, each operation unit shall be identifiable as to the type of operation activity, by legal subdivision, and drawn on a map to scale, aerial photograph corrected for distortion, or other appropriate means. Operations involving harvesting in more than one county may not be combined on the same notification because of tax collection requirements.

(8) When operations include the application of chemicals, properly completed notifications shall include the common name of the chemicals to be used; the brand name, if known at the time of notification; the application method; and, for fertilizers, the intended application rate per acre. Public information on allowable application rates of commonly applied forest chemicals will be maintained at department field offices. Additional information on chemical applications shall be collected and recorded by operators at the time of application, and made available upon request to the State Forester, pursuant to OAR 629-620-0600.

(9) The operator, landowner or timber owner, whichever filed the original notification, shall contact the State Forester and report any subsequent change to information contained in the notification. Additions to the geographic location, however, shall require a separate notification.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.715
Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 33, f. 6-15-73, ef. 7-1-73; FB 5-1978, f. 6-7-78; FB 2-1988, f. & cert. ef. 5-11-88; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-024-0108; DOF 6-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

ADMINISTRATIVE RULES

629-605-0170

Written Plans

(1) Operators must submit to the State Forester a written plan as required by ORS 527.670(3) before conducting any operations requiring notification under OAR 629-605-0140, which are within:

(a) Within 100 feet of a stream classified as Type F or Type D. Written plans for Type F and Type D streams, are further described in OAR 629-635-0130.

(b) 300 feet of a specific site involving threatened or endangered wildlife species, or sensitive bird nesting, roosting, or watering sites; as listed by approximate legal description, in a document published by the Department of Forestry titled "Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984."

(c) 300 feet of any resource site identified in OAR 629-665-0100 (Sensitive Bird Nesting, Roosting and Watering Resource Sites on Forestlands), OAR 629-665-0200 (Threatened and Endangered Species that use Resource Sites on Forestlands), or OAR 629-645-0000 (Significant Wetlands).

(d) 300 feet of any nesting or roosting site of threatened or endangered species listed by the U.S. Fish and Wildlife Service or by the Oregon Fish and Wildlife Commission by administrative rule.

(2) The State Forester shall notify the operator of the presence of one of the sites listed in section (1) of this rule and the requirement of the written plan at any time the State Forester determines the presence of the above sites.

(3) Written plans required under section (1) of this rule shall be subject to the hearings provisions of ORS 527.700(3) (Appeals from orders of State Forester hearings procedure; stay of operation); and shall be subject to the provisions of ORS 527.670(1), (11) and (12) (Commencement of operations; when notice and written plan required; appeal of plan) prescribing certain waiting periods and procedures.

Non-Statutory

(4) Unless waived by the State Forester, the operator must submit a written plan as required by ORS 527.670(2) prior to beginning the operations or practices listed below, which shall not be subject to the provisions of ORS 527.700(3) or 527.670(10), (11) and (12).

(a) (For information only) The following list indicates the circumstances where the State Forester may require a written plan. These same circumstances need to be addressed in a written plan if required by statute.

(b) Operating near or within:

(A) Sites that are listed in the "Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984" or sites designated by the State Forester (629-605-190(1)); or

(B) Habitat sites of any wildlife or aquatic species classified by the Department of Fish and Wildlife as threatened or endangered (629-605-190(2)).

(c) Conducting timber harvesting or road construction operations with intermediate or substantial downslope public safety risk (629-623-700(1));

(d) Constructing a stream crossing fill over a debris torrent-prone stream with intermediate or substantial downslope public safety risk (629-623-700(2));

(e) Locating a waste-fill area within a drainage containing debris torrent-prone streams with intermediate or substantial downslope public safety risk (629-623-700(3));

(f) Constructing a road where there is an apparent risk of road-generated materials entering waters of the state from direct placement, rolling, falling, blasting, landslide or debris flow (629-625-100(2)(a));

(g) Constructing a road within the riparian management area of a medium or large Type N stream (629-625-100(2)(c));

(h) Constructing a road on high landslide hazard locations (629-625-0100(3));

(i) Constructing a permanent stream crossing fill over 15 feet deep in a Type N stream (629-625-0100(4));

(j) Placing woody debris or boulders in the stream channel of a Type N stream for stream enhancement (629-625-0100(4));

(k) Locating a landing within the riparian management area of a medium or large Type N stream (629-630-0200(3));

(l) Yarding across streams classified as medium or large Type N (629-630-0700(3));

(m) Constructing a temporary stream crossing fill over 8 feet deep in a Type N stream (629-630-0800(4)(c));

(n) Operating within 100 feet of a large lake (629-635-0130(1)(c));

(o) Removing beaver dams or other natural obstructions located farther than 25 feet from a culvert in a Type N stream (629-660-0050(1));

(p) Operating near a resource site requiring special protection as described in 629-665-0020(2); and

(q) Operating near a Northern Spotted Owl resource site as described in 629-665-0210(1).

(5) If an operator, timber owner or landowner is required to submit a written plan to the State Forester under subsection (4) of this section:

(a) The State Forester shall review the written plan and may provide comments to the person who submitted the written plan;

(b) Provided that notice has been given as required by 527.670(6), the operation may commence on the date the State Forester provides comments. If no comments are provided the operation may commence at any time after 14 calendar days following the date the written plan was received;

(c) Comments provided by the State Forester under paragraph (a) of this subsection, to the person who submitted the written plan are for the sole purpose of providing advice to the operator, timber owner or landowner regarding whether the operation described in the written plan is likely to comply with ORS 527.610 to 527.770 and rules adopted thereunder. Comments provided by the State Forester do not constitute an approval of the written plan or operation;

(d) If the State Forester does not comment on a written plan, the failure to comment does not mean an operation carried out in conformance with the written plan complies with ORS 527.610 to 527.770 or rules adopted thereunder nor does the failure to comment constitute a rejection of the written plan or operation;

(e) In the event that the State Forester determines that an enforcement action may be appropriate concerning the compliance of a particular operation with ORS 527.610 to 527.770 or rules adopted thereunder, the State Forester shall consider, but is not bound by, comments that the State Forester provided under this section.

Written Plan Content

(6) Written plans must contain a description of how the operation is planned to be conducted in sufficient detail to allow the State Forester to evaluate and comment on the likelihood that the operation will comply with the Forest Practices Act or administrative rules.

(7) Written plans required under this section will be considered received when complete with the following information:

(a) A map showing protected resource(s) and the harvest area; and

(b) The specific resource(s) that require protection; and

(c) The practices that may affect the protected resource(s) such as road and landing location, disposal of waste materials, felling and bucking and post operation stabilization measures; and

(d) The specific techniques and methods employed for resource protection such as road and landing design, road construction techniques, drainage systems, buffer strips, yarding system and layout; and

(e) Additional written plan content required in individual rules.

(8) Modification of a written plan shall be required when, based on information that was not available or was unknown at the time the original written plan was reviewed, the State Forester determines the written plan no longer addresses compliance with applicable forest practice rules. Written plans with modifications required under this section shall not be subject to the provisions of ORS 527.670(10) and (11) relating to waiting periods for written plans.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.670

Hist.: FB 3-1983, f. & ef. 9-13-83; FB 3-1985, f. & ef. 6-11-85; FB 4-1988, f. 7-27-88, cert. ef. 9-1-88; FB 4-1990, f. & cert. ef. 7-25-90; FB 7-1991, f. & cert. ef. 10-30-91; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-024-0113; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-605-0173

Plans for an Alternate Practice

(1) Operators must obtain written approval of a plan for an alternate practice from the State Forester before conducting forest practices utilizing protection standards or methods different than those specified in rule or statute.

(2) Plans for an alternate practice must include sufficient information to allow the State Forester to assess the plan to determine that the practices described in the plan will yield results consistent with ORS 527.610 to 527.770 and administrative rules adopted thereunder.

(e) Plans for alternate practices proposed as part of a written plan required by ORS 527.670(3) shall be subject to the hearings provisions of ORS 527.700(3) (Appeals from orders of State Forester hearings procedure; stay of operation); and shall be subject to the provisions of ORS 527.670(1), (11) and (12) (Commencement of operations; when notice and written plan required; appeal of plan) prescribing certain waiting periods and procedures.

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(4) An operator must comply with all provisions of an approved plan for an alternate practice.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.670(10),(11),(12), 527.700(2),(5),(6),(8),(9)

Hist.: DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-605-0175

Harvest Type 3 Units Exceeding 120 Acres

(1) The purpose of this rule is to describe the process that operators shall follow to gain approval of a plan for an alternate practice for a harvest type 3 unit that is between 120 and 240 acres in size.

(2) Operators must obtain written approval of a plan for an alternate practice from the State Forester before conducting operations that result in a single harvest type 3 unit, or combinations of harvest type 3 units, that exceed the contiguous 120 acre limit on a single ownership.

(3) For each unit on which a harvest type 3 is proposed to exceed the contiguous 120 acre limit, the plan for an alternate practice shall:

(a) Describe the planned harvest including, but not limited to, the elements of a written plan listed in OAR 629-605-0170;

(b) Include a detailed map of the planned harvest that shows the specific unit boundaries; and

(c) Demonstrate that the larger harvest size will result in increased protection of, or reduced adverse impact on, any or all of the resources and values protected by the Oregon Forest Practices Act. For the purposes of this rule, resources and values includes:

(A) Air quality, water resources, soil productivity, and fish and wildlife resources as described in ORS 527.710(2);

(B) The resource sites needing protection as listed in ORS 527.710(3);

(C) Scenic resources within visually sensitive corridors as provided in ORS 527.755; and

(D) Public safety related to landslides.

(4) The State Forester shall review the operator's compliance with the Oregon Forest Practices Act and deny approval of the plan for an alternate practice submitted under this rule when the operator has:

(a) Received citations for violating a forest practice rule or statute within the past year; or

(b) Failed to comply with an order to cease further violation, an order to repair damage, or an order to correct an unsatisfactory condition under ORS 527.680(2).

(5) Plans submitted under this rule shall not be subject to appeal under ORS 527.700(3).

(6) Single harvest type 3 units or combinations of harvest type 3 units may not exceed 240 contiguous acres on a single ownership, except when the units have been reforested as described in ORS 527.750(1)(a), (b) and (c).

(7) The harvest type 3 acreage limitations do not apply for conversions or disasters described in ORS 527.740(4) when the operator obtains approval from the State Forester of a plan for an alternate practice before conducting operations.

Stat. Auth.: ORS 527.710, 526.016(4), 527.714 & 527.715

Stats. Implemented: ORS 527.750(5), 527.765, 527.710(3)(a)(D) & 527.670(8)

Hist.: DOF 6-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-605-0180

Interim Process for Protecting Sensitive Resource Sites Requiring Written Plans

Protection practices for sites requiring written plans under OAR 629-605-0170(1)(b) or (d) shall be determined for each site as follows:

(1) The State Forester shall notify the operator and landowner of the presence of a site requiring a written plan, and request their input into the decision making process.

(2) The State Forester shall, when practical, inspect the proposed operation with the landowner or landowner's representative, the operator, and the appropriate representative of the Department of Fish and Wildlife. The State Forester shall then determine if the proposed forest practice is in conflict with the protection of the sensitive resource site.

(3) If planned forest practices are determined to conflict with protection of the sensitive resource site, the written plan must describe reasonable measures sufficient to resolve the conflict in favor of the resource site. Reasonable measures to resolve the conflict in favor of the resource site may include but are not limited to preparing and implementing a habitat management plan, obtaining approval of a plan for an alternate practice, limiting the timing of forest practices, redesigning the proposed practices in favor of site protection and excluding the forest activities outright.

(4) If planned forest practices are determined not to conflict with protection of the sensitive resource site, the written plan shall describe how the operation will be conducted in compliance with existing forest practice rules. No additional protection measures shall be required.

Stat. Auth.: ORS 527.710, 526.016(4), 527.714 & 527.715

Stats. Implemented: ORS 527.750(5), 527.765, 527.710(3)(a)(D), 527.670(8)

Hist.: FB 4-1988, f. 7-27-88, cert. ef. 9-1-88; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-024-0118; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-605-0190

Written Plans for Operations Near Critical, Threatened, or Endangered Wildlife Habitat Sites

Operators must submit a written plan to the State Forester before operating near or within:

(1) Critical wildlife or aquatic habitat sites that are listed in a 1984 cooperative agreement between the Board of Forestry and the Fish and Wildlife Commission or sites designated by the State Forester; or

(2) Habitat sites of any wildlife or aquatic species classified by the Department of Fish and Wildlife as threatened or endangered.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.710

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-605-0500

Modification of Requirements for Forest Health and Public Safety

Protection requirements for streams, lakes, wetlands and riparian management areas may be modified by approval of a plan for an alternate practice by the State Forester for reasons of forest health or because of hazards to public safety or property. Hazards to public safety or property include hazards to river navigation and hazards to improvements such as roads, bridges, culverts, or buildings. Forest health concerns include fire, insect infestations, disease epidemics, or other catastrophic events not otherwise addressed in OAR 629-640-0300. Such modifications of protection requirements should prevent, reduce or alleviate the forest health conflict or hazard while meeting the intent of the protection goals as much as possible.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.710

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-057-2040; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-610-0020

Reforestation Stocking Standards

(1) The landowner shall increase tree stocking to a level that meets the applicable productivity-based stocking standards described in sections (4), (5) and (6) of this rule within the time limits established by OAR 629-610-0040 whenever post-operation free to grow tree stocking in all or a portion of the operation area is below the applicable stocking standards and:

(a) Trees or snags of acceptable species are harvested; or

(b) Free to grow tree stocking is reduced as a result of the operation.

(2) Reforestation is not required on those portions of the operation area:

(a) Where adequate free to grow tree stocking remains after the completion of the operation;

(b) That are not disturbed by operation activities; or

(c) On soils or sites not meeting the minimum productivity requirements of OAR 629-610-0010.

(3) The State Forester shall approve a plan for an alternate practice to waive or modify the reforestation requirements following a stand improvement operation such as a precommercial thinning, commercial thinning, overstory removal, or other partial cut harvest if the State Forester determines that the residual stand conditions after such an operation will result in enhanced long-term tree growth and there is a high probability the purpose of the reforestation rules will be achieved.

(4) For Cubic Foot Site Class I, II and III forestlands (capable of producing at least 120 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:

(a) 200 free to grow seedlings per acre; or

(b) 120 free to grow saplings and poles per acre; or

(c) 80 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or

(d) An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.

(5) For Cubic Foot Site Class IV and V forestlands (capable of producing between 50 and 119 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:

(a) 125 free to grow seedlings per acre; or

(b) 75 free to grow saplings and poles per acre; or

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(c) 50 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or

(d) An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.

(6) For Cubic Foot Site Class VI forestlands (capable of producing between 20 and 49 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:

(a) 100 or more free to grow seedlings per acre; or

(b) 60 free to grow saplings and poles per acre; or

(c) 40 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or

(d) An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.

(7) In both even-aged and uneven-aged stands, the stocking of residual seedlings, saplings and poles, and larger trees shall be weighted to determine stand stocking and potential reforestation requirements. For this purpose, seedlings, saplings and poles, and trees 11-inches DBH and larger are proportionally equivalent in the following ratios: 100 free to grow seedlings are equivalent to 60 free to grow saplings and poles, which are equivalent to 40 square feet of basal area of free to grow trees 11-inches DBH and larger.

(8) Live conifer trees 11-inches DBH and larger left standing in harvested areas to meet the green tree and snag retention requirements of Section 5, Chapter 919, Oregon Laws 1991 shall be counted towards meeting the tree stocking standards if the trees are free to grow.

(9) For the purposes of determining compliance with the tree stocking requirements of the reforestation rules, tree stocking in riparian management areas within an operation area will be considered separately from stocking in the rest of the operation area.

(10) Landowners may submit plans for alternate practices that do not conform to the reforestation stocking levels established under these rules. A plan for alternate practices may be approved if the State Forester determines that there is a high probability that the purpose of the reforestation rules will be achieved, or if the plan carries out an authorized research project conducted by a public agency or educational institution.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-610-0030

Natural Reforestation Methods

(1) Natural reforestation methods may be the best means to meet a variety of resource management objectives on some forestlands. Successful natural reforestation requires careful, flexible, site-specific pre-harvest planning and post-harvest monitoring.

(2) Reforestation may be difficult on Cubic Foot Site Class VI forestlands due to factors such as poor soils, harsh climate and competing vegetation. Reforestation in wetland areas may be difficult because of high water tables, competing vegetation, and inaccessibility. Careful reforestation planning is needed before operations are conducted on these sites. On Cubic Foot Site Class VI forestlands and in wetlands, the use of silvicultural systems that promote natural regeneration and the retention of good quality residual trees after operations often have a higher probability of success than artificial reforestation methods.

(3) When an operation will result in a reforestation requirement and natural reforestation methods are planned, the landowner shall submit to the State Forester a plan for an alternate practice which describes how reforestation will be accomplished. Information in the plan shall include:

(a) A description of the seed sources that will be used;

(b) Site preparation and vegetation competition control methods;

(c) An estimate of the time needed to obtain an adequately stocked free to grow stand;

(d) How progress towards natural reforestation will be evaluated; and

(e) Alternative strategies that will be used if natural reforestation does not progress as planned.

(4) The plan for an alternate practice required in section (3) of this rule must be submitted no later than twelve months after tree stocking is reduced.

(5) Plans for an alternate practice for the use of natural reforestation methods shall be approved by the State Forester if a determination is made that the information provided accurately indicates there is a high probability the purpose of the reforestation rules will be achieved.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-610-0040

Time Allowed for Reforestation

(1) The time period for compliance with the reforestation rules begins at the completion of the operation or 12 months after tree stocking has been reduced, whichever comes first.

(2) The landowner shall begin reforestation, including any necessary site preparation, within 12 months when reforestation is required.

(3) The landowner shall complete planting or seeding within 24 months unless a plan for an alternate practice for natural reforestation has been approved by the State Forester.

(4) By the end of the sixth full calendar year, the landowner shall have established a free to grow stand of trees which meets or exceeds the minimum stocking level required by OAR 629-610-0020.

(5) When natural reforestation methods are planned, the time limits for evidence of successful germination and for establishing a free to grow stand of trees which meets or exceeds the minimum stocking level required for the site shall be established in the approved plan for an alternate practice required for such methods.

(6) If reforestation cannot be accomplished within the specified time due to circumstances determined by the State Forester to be beyond the landowner's control, the State Forester shall extend the time to accomplish reforestation. Such circumstances may include, but are not limited to:

(a) Nursery failure;

(b) Inadequate seedling availability following salvage harvesting;

(c) Extreme drought;

(d) Insect infestation;

(e) State smoke management restrictions on the burning of slash;

(f) Wildfire or disease damage; or

(g) Severe wildlife damage that could not be reasonably anticipated or controlled by the landowner.

(7) Extensions shall be made only upon a determination by the State Forester, based on timely written evidence provided by the landowner, that documents the landowner made reasonable attempts to comply with the reforestation requirements of the rules.

(8) Where an extension is granted for reforestation failure on land suitable for reforestation or in cases where a violation of the reforestation rules is cited, the landowner shall be required to take remedial action to achieve the required stocking standards within a time prescribed by the State Forester using recognized stand establishment methods.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-610-0050

Acceptable Species for Reforestation and Residual Stand Stocking

(1) The State Forester shall determine if tree species are acceptable for artificial reforestation, natural reforestation, and as residual seedling, sapling and pole, or larger tree stocking based on all of the following criteria:

(a) The species must be ecologically suited to the planting site;

(b) The species must be capable of producing logs, fiber, or other wood products suitable in size and quality for the production of lumber, sheeting, pulp or other commercial forest products; and

(c) The species must be marketable in the foreseeable future.

(2) Up to 20 percent of the site-based stocking levels required by 629-610-0020 may be met by using free to grow hardwood trees remaining after harvest if the trees are of species meeting the requirements of section (1) of this rule. An approved plan for an alternate practice is required before more than 20 percent of the required stocking may be met with residual, post-operation hardwood trees. Approval for the use of higher levels of hardwood residual stocking shall be based on a determination by the State Forester that there is a high probability the purpose of the reforestation rules will be achieved.

(3) Landowners are encouraged to reforest with a mixture of acceptable tree species, where appropriate, to reduce the risk of insect and disease losses and to promote stand diversity. Seedlings or seeds used for artificial reforestation should be from seed sources that are genetically adapted to the growing site.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

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629-610-0060

Use of Non-Native Tree Species

(1) When an operation will result in a reforestation requirement, and the landowner intends to plant or seed a tree species not native to the operation area, the landowner shall submit for approval a plan for an alternate practice to the State Forester which describes the tree species and how it will be used to meet the reforestation requirements. Information in the plan must include:

- (a) The tree species that will be used;
- (b) Evidence that the species is ecologically suited to the planting site;
- (c) Evidence that the species is capable of producing commercial forest products that will be marketable in the foreseeable future; and
- (d) Available research or field test findings which demonstrate the tree species has been successfully used in reforesting sites similar to the operation area.

(2) A plan for an alternate practice for the use of non-native tree species must be submitted for approval no later than twelve months after tree stocking is reduced and prior to planting. Plans for an alternate practice for the use of non-native tree species shall be approved by the State Forester if a determination is made that the information provided indicates there is a high probability the purpose of the reforestation rules will be achieved.

(3) For the purpose of this rule, any tree species that the State Forester determines has naturally existed and reproduced in the operation area or on similar sites shall be considered a native species.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-610-0070

Suspension of the Reforestation Rules

(1) A landowner must submit to the State Forester a plan for an alternate practice to suspend the reforestation rules for the salvage or conversion of low value forest stands, to establish forest stands that are adequately stocked and free to grow.

(2)(a) The State Forester may approve the plan for an alternate practice when the harvest area is a conversion of underproducing forestland, or a salvage of forest stands where the merchantable trees are dead or dying due to wildfire, insects, diseases or other factors beyond the landowner's control and the State Forester determines:

(A) The landowner is approved for funding from a forest incentive program, for which the State Forester is the technical advisor; and

(B) The gross harvest revenues will not exceed the total costs of harvest, taxation, and reforestation.

(b) For the purposes of this rule, "conversion of underproducing forestland" means an operation conducted on forestland subject to the reforestation requirements that does not currently support the minimum number of free to grow trees required with the objective of removing undesirable competing vegetation, including the incidental harvest of forest products, and establishing an adequately stocked, free to grow forest stand.

(3) To determine whether subsection (2)(a)(B) of this rule is met on a harvest operation that has not started, the State Forester shall make a field observation of the harvest area to determine:

(a) The estimated merchantable volume;

(b) The value of the merchantable volume by applying current local market values; and

(c) The estimated harvest, taxation, and reforestation costs.

(4) When the State Forester is not able to determine the projected revenues and projected costs from the field observation described in subsection (3) of this rule, the State Forester may require the landowner to submit one or more of the following:

(a) A third party estimate, by species and grade, of the volumes and values of logs to be delivered to the mill;

(b) The projected costs of harvesting the forest products, including, but not limited to, harvest planning and administration, road construction and maintenance, felling and bucking, yarding, and loading and hauling;

(c) The projected severance, harvest, and income taxes;

(d) The projected costs of reforestation, including planning and administration, site preparation, trees, tree planting, tree protection, and moisture conservation; or

(e) The projected costs of any other measures necessary to establish a forest stand in an adequately stocked and free to grow condition, as specified in the reforestation rules.

(5) To determine whether subsection (2)(a)(B) of this rule is met on a harvest operation that has started, but is not yet complete, the landowner shall submit to the State Forester one or more of the following:

(a) The contracts executed to sell and harvest forest products, including but not limited to, all logging costs and receipts;

(b) All the forest products scaling summaries showing gross and net volumes, by species and corresponding mill receipts showing payment; or

(c) Any tax forms, records or reports submitted by the landowner that detail the gross and net volumes of forest products harvested, by species, plus logging and management costs used to determine harvest and severance taxes.

(6) Operations that are complete are not eligible for a suspension of the reforestation rules.

(7) The State Forester shall revoke the suspension of the reforestation rules at any time within 6 years of completing the operation if the landowner fails to establish a forest stand:

(a) According to the specifications and time lines required under the applicable forest incentive program; or

(b) In an adequately stocked and free to grow condition, as specified in the reforestation rules.

Stat. Auth.: ORS 527.670, 527.700, 527.710, 527.730, 527.765, 919.3 & 919.9

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95, Renumbered from 629-057-5170; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-610-0090

Exemption from Reforestation for Land Uses Not Compatible with Forest Tree Cover

(1) A landowner, through a plan for an alternate practice, may request all, or portions of, an operation area be exempted from the reforestation requirements for the purpose of developing forestland for a use that is not compatible with the maintenance of forest tree cover. Approval of a plan for an alternate practice shall be obtained for such an exemption from the State Forester and shall only be granted for the smallest land area necessary to carry out the intended change in land use. Reforestation shall be required on the portions of operation areas not directly involved in the land use change.

(2) In seeking approval of the plan for an alternate practice, the landowner shall provide written documentation to the State Forester which establishes:

(a) The specific portion of the operation area necessary for the proposed change in land use;

(b) The intended change in land use and the incompatibility of the land use with forest tree cover;

(c) The intended change in land use is authorized under local land use and zoning ordinances, and all necessary permits and approvals have been obtained, or will be obtained within 12 months following the reduction in tree stocking; and

(d) The county assessor and local planning department have been notified in writing of the proposed change in land use.

(3) Reasonable progress towards the change in land use, as determined by the State Forester, shall be made within 12 months of the completion of the operation. Evidence of reasonable progress towards a change to an agricultural use may include activities such as stump removal, cultivation, fencing, and planting or seeding of crops or pasture. Evidence of reasonable progress towards a change to use involving building a structure may include activities such as stump removal, excavation, and construction.

(4) The change in land use shall be completed and continuously maintained within 24 months of the completion of the operation.

(5) If the change in land use cannot be accomplished within the specified time due to circumstances beyond the landowner's control, the State Forester shall extend the time to accomplish the change in land use. Such circumstances may include, but are not limited to, governmental delays in reviewing and processing permits and approvals, but do not include delays where a landowner is appealing the denial of a permit or approval if the State Forester does not have reason to believe the landowner will prevail on appeal. Extensions shall be made only upon a determination by the State Forester, based on written evidence provided by the landowner, that the landowner made reasonable attempts to comply. Landowners who need extensions are encouraged to contact the State Forester as soon as possible after the circumstances occur.

(6) The State Forester shall determine if the change in land use has been completed by:

(a) The presence or absence of improvements necessary for use of the land for the intended purpose; and

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(b) Evidence of established and continuously maintained use of the land for the intended purpose.

(7) To remain exempt from the reforestation requirements the landowner shall continuously maintain the land in the new use until at least six calendar years following the completion of the operation.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-615-0300

Prescribed Burning

(1) Prescribed burning is a tool used to achieve reforestation, maintain forest health, improve wildlife habitat and reduce wildfire hazard. Prescribed burning is to be done consistent with protection of air and water quality, and fish and wildlife habitat. The purpose of this rule is to ensure that necessary prescribed burning is planned and managed to maximize benefits and minimize potential detrimental effects.

(2) When planning and conducting prescribed burning, operators shall:

(a) Comply with the rules of Oregon's "Smoke Management Plan."

(b) Adequately protect reproduction and residual timber, humus and soil surface.

(c) Consider possible detrimental effects of prescribed burning upon riparian management areas, streams, lakes, wetlands, and water quality, and how these effects can be best minimized.

(d) Lay out the unit and use harvesting methods that minimize detrimental effects to riparian management areas, streams, lakes, wetlands, and water quality during the prescribed burning operation.

(e) Fell and yard the unit to minimize accumulations of slash in channels and within or adjacent to riparian management areas.

(f) Minimize fire intensity and amount of area burned to that necessary to achieve reforestation, forest health, or hazard reduction needs.

(3) When burning within 100 feet of Type F and Type D streams, within 100 feet of large lakes, and within 300 feet of significant wetlands, operators shall describe in the written plan how detrimental effects will be minimized within riparian management areas; especially when burning on highly erosive soils, for example decomposed granite soils and slopes steeper than 60 percent.

(4) During prescribed burning operations, operators shall protect components such as live trees, snags, downed wood, and understory vegetation required to be retained by OAR 629-635-0310 through 629-650-0040. When the operator has taken reasonable precautions to protect the components, but some detrimental effects occur, the intent of the rule is met if the overall integrity of the riparian management area is maintained. Operators shall not salvage trees killed by prescribed fire in a riparian management area if the trees were retained for purposes of OAR 629-635-0310 through 629-655-0000.

(5) When the need for prescribed burning outweighs the benefits of protecting components required to be left within the riparian area, aquatic area and wetlands, protection requirements may be modified through a plan for an alternate practice. Approval of such a plan shall consider the environmental impacts and costs of alternative treatments.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-024-0302; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-623-0450

Restriction of Road Construction — Substantial Down Slope Public Safety Risk

(1) Operators shall not construct new roads on high landslide hazard locations or other very steep slopes with substantial downslope public safety risk.

(2) Operators may reconstruct existing roads in high landslide hazard locations when the operator demonstrates in the written plan required by OAR 629-623-0700 that road reconstruction will reduce landslide hazard and incorporate site-specific practices as directed by a geotechnical specialist.

Stat. Auth.: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5) & 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-623-0550

Road Construction — Intermediate Down Slope Public Safety Risk

(1) When constructing roads on high landslide hazard locations or other very steep slopes with intermediate downslope public safety risk,

operators shall follow site-specific practices as directed by a geotechnical specialist.

(2) In addition to the road construction and maintenance rules in OAR 629-625-0100 through 629-625-0440, written plans shall include:

(a) An evaluation of cutslope stability that demonstrates major cutslope failure is very unlikely; and

(b) A description of measures to be taken to prevent water from draining onto high landslide hazard locations.

Stat. Auth.: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5) & 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-623-0700

Written Plans

(1) To allow evaluation of public safety risk and the appropriate methods for reducing this risk, operators shall submit a written plan for all timber harvesting or road construction operations with intermediate or substantial downslope public safety risk as described in OAR 629-623-0300. Written plans shall include:

(a) A determination of public safety risk (OAR 629-623-0300);

(b) A map showing those portion(s) of the operation containing high landslide hazard locations;

(c) The location of all existing and proposed new roads crossing high landslide hazard locations;

(d) A detailed road design for all new or reconstructed roads crossing high landslide hazard locations;

(e) The location of habitable structures (Exposure Category A) and paved public roads (Exposure Category B) below the operation and within further review areas;

(f) Locations where timber harvesting will not occur;

(g) Locations where partial cutting will occur and the specific silvicultural prescription; and

(h) Additional information related to the operation as requested by the State Forester.

(2) Operators shall submit a written plan for proposed stream crossing fills constructed across debris torrent-prone streams with substantial or intermediate downslope public safety risk.

(3) Operators shall submit a written plan for proposed waste fill areas within a drainage containing debris torrent-prone streams where there is substantial or intermediate downslope public safety risk.

Stat. Auth.: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5) & 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-625-0100

Written Plans for Road Construction

(1) A properly located, designed, and constructed road greatly reduces potential impacts to water quality, forest productivity, fish, and wildlife habitat. To prevent improperly located, designed, or constructed roads, a written plan is required in the sections listed below.

(2) In addition to the requirements of the water protection rules, operators must submit a written plan to the State Forester before:

(a) Constructing a road where there is an apparent risk of road-generated materials entering waters of the state from direct placement, rolling, falling, blasting, landslide or debris flow;

(b) Conducting machine activity in Type F or Type D streams, lakes or significant wetlands; or

(c) Constructing roads in riparian management areas.

(3) Operators shall submit a written plan to the State Forester before constructing roads on high landslide hazard locations. Operators and the State Forester shall share responsibility to identify high landslide hazard locations and to determine if there is public safety exposure from shallow, rapidly moving landslides using methods described in OAR 629-623-0000 through 0300. If there is public safety exposure, then the practices described in OAR 629-623-0400 through 0800 shall also apply.

(4) In addition to the requirements of the water protection rules, operators shall submit a written plan to the State Forester before placing woody debris or boulders in stream channels for stream enhancement.

Stat. Auth.: ORS 527.710(2)

Stats. Implemented: ORS 527.630(3), 527.765 & 527.714

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

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629-625-0320

Stream Crossing Structures

(1) Operators shall design and construct stream crossing structures (culverts, bridges and fords) to:

- (a) Minimize excavation of side slopes near the channel.
- (b) Minimize the volume of material in the fill.

(A) Minimizing fill material is accomplished by restricting the width and height of the fill to the amount needed for safe use of the road by vehicles, and by providing adequate cover over the culvert or other drainage structure.

(B) Fills over 15 feet deep contain a large volume of material that can be a considerable risk to downstream beneficial uses if the material moves downstream by water. Consequently, for any fill over 15 feet deep operators shall submit to the State Forester a written plan that describes the fill and drainage structure design. Written plans shall include a design that minimizes the likelihood of:

- (i) Surface erosion;
 - (ii) Embankment failure; and
 - (iii) Downstream movement of fill material.
- (c) Prevent erosion of the fill and channel.

(2) Operators shall design and construct stream crossings (culverts, bridges, and fords) to:

(a) Pass a peak flow that at least corresponds to the 50-year return interval. When determining the size of culvert needed to pass a peak flow corresponding to the 50-year return interval, operators shall select a size that is adequate to preclude ponding of water higher than the top of the culvert; and

(b) Allow migration of adult and juvenile fish upstream and downstream during conditions when fish movement in that stream normally occurs.

(3) An exception to the requirements in subsection (2)(a) of this rule is allowed to reduce the height of fills where roads cross wide flood plains. Such an exception shall be allowed if the operator obtains approval of a plan when the plan demonstrates:

- (a) The stream crossing site includes a wide flood plain; and
- (b) The stream crossing structure matches the size of the active channel and is covered by the minimum fill necessary to protect the structure;
- (c) Except for culvert cover, soil fill is not placed in the flood plain; and

(d) The downstream edge of all fill is armored with rock of sufficient size and depth to protect the fill from eroding when a flood flow occurs.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-625-0430

Stream Protection

(1) When constructing stream crossings, operators shall minimize disturbance to banks, existing channels, and riparian management areas.

(2) In addition to the requirements of the water protection rules, operators shall keep machine activity in beds of streams to an absolute minimum. Acceptable activities where machines are allowed in streambeds, such as installing culverts, shall be restricted to periods of low water levels. Operators shall submit a written plan to the State Forester for machine activity in Type F or Type D streams, lakes, and significant wetlands.

(3) For all roads constructed or reconstructed operators shall install water crossing structures where needed to maintain the flow of water and passage of adult and juvenile fish between side channels or wetlands and main channels.

(4) Operators shall leave or re-establish areas of vegetation between roads and waters of the state to protect water quality.

(5) Operators shall remove temporary stream crossing structures promptly after use, and shall construct effective sediment barriers at approaches to channels.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-630-0200

Landings

(1) Operators shall minimize the size of landings to that necessary for safe operation.

(2) Operators shall locate landings on stable areas so as to minimize the risk of material entering waters of the state.

(3) Operators shall avoid locating landings in riparian management areas. When no feasible alternative landing locations exist, operators shall submit a written plan to the State Forester before locating landings in riparian management areas.

(4) Operators shall not incorporate slash, logs, or other large quantities of organic material into landing fills.

(5) Operators shall deposit excess material from landing construction in stable locations well above the high water level.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-630-0600

Felling; Removal of Slash

(1) Operators shall fell, buck, and limb trees in ways that minimize disturbance to channels, soils and retained vegetation in riparian management areas, streams, lakes and all wetlands greater than one-quarter acre, and that minimize slash accumulations in channels, significant wetlands and lakes.

(2) During felling operations operators shall:

(a) Whenever possible, fell all conifer trees away from riparian management areas, streams, lakes and significant wetlands, except for trees felled for stream improvement projects.

(b) On steep slopes, use felling practices such as jacking, line pulling, high stumps, whole tree yarding, or stage-cutting as necessary and feasible to prevent damage to vegetation retained in riparian management areas, soils, streams, lakes and significant wetlands.

(c) When hardwoods must be felled into or across streams, lakes or significant wetlands, operators shall:

(A) Buck and yard the trees to minimize damage to beds, banks and retained vegetation.

(B) When it can be done consistently with protecting beds and banks, yard hardwood trees or logs away from the water before limbing.

(3) Operators shall minimize the effects of slash that may enter waters of the state during felling, bucking, limbing or yarding by:

(a) Removing slash from Type F and Type D streams, lakes and significant wetlands as an ongoing process (removal within 24 hours of the material entering the stream) during the harvest operation.

(b) Not allowing slash to accumulate in Type N streams, lakes or wetlands in quantities that threaten water quality or increase the potential for mass debris movement.

(c) Placing any slash that is removed from streams, lakes, or wetlands above high water levels where it will not enter waters of the state.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2610; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-660-0000; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-630-0700

Yarding; Cable Equipment Near Waters of the State

(1) Operators shall maintain the purposes and functions of vegetation required to be retained in riparian management areas and minimize disturbance to beds and banks of streams, lakes, all wetlands larger than one-quarter acre, and retained vegetation during cable yarding operations.

(2) Operators shall minimize the yarding of logs across streams, lakes, significant wetlands, and other wetlands greater than one-quarter acre whenever harvesting can be accomplished using existing roads or other practical alternatives.

(3) Operators may use yarding corridors through retained streamside trees as long as the numbers and widths of yarding corridors are minimized. Operators shall submit a written plan to the State Forester when yarding across streams classified as Type F or Type D, any large or medium Type N streams, lakes, or significant wetlands.

(4) When yarding across Type F or Type D streams, any large or medium Type N streams, lakes, or significant wetlands is necessary, it shall be done by swinging the yarded material free of the ground in the aquatic areas and riparian areas.

(5) Cable yarding across streams classified as small Type N or other wetlands greater than one-quarter acre shall be done in ways that minimize disturbances to the stream channel or wetland and minimize disturbances of retained streamside vegetation.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2620; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-660-0010; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

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629-630-0800

Yarding; Ground-Based Equipment Near Waters of the State

(1) Operators shall maintain the purposes and functions of vegetation required to be retained in riparian management areas, and minimize disturbances to beds and banks of streams, lakes, all wetlands larger than one-quarter acre, and retained vegetation during ground-based yarding operations.

(2) Operators shall not operate ground-based equipment within any stream channel except as allowed in the rules for temporary stream crossings.

(3) Operators shall minimize the number of stream crossings.

(4) For crossing streams that have water during the periods of the operations, operators shall:

(a) Construct temporary stream crossing structures such as log crossings, culvert installations, or fords that are adequate to pass stream flows that are likely to occur during the periods of use. Structures shall be designed to withstand erosion by the streams and minimize sedimentation.

(b) Choose locations for temporary stream crossing structures which minimize cuts and fills or other disturbances to the stream banks.

(c) Minimize the volume of material in any fills constructed at a stream crossing. Fills over eight feet deep contain such a large volume of material that they can be a considerable risk to downstream beneficial uses should the material move downstream by water. For any fill for a temporary crossing that is over eight feet deep, operators shall submit to the State Forester of a written plan that includes a description of how the fills would be constructed, passage of water, and the length of time the fills would be in the stream.

(d) Design temporary structures so that fish movement is not impaired on Type F streams.

(e) Remove all temporary stream crossing structures immediately after completion of operations or prior to seasonal runoff that exceeds the water carrying capacity of the structures, whichever comes first. When removing temporary structures, operators shall place fill material where it will not enter waters of the state.

(5) For stream crossings where the channels do not contain water during the periods of the operations, operators are not required to construct temporary crossings as long as disturbances are no greater than what would occur if structures were constructed. Soil that enters the channels during the yarding operations must be removed after completion of the operation or prior to stream flow, whichever comes first. When removing such materials from the channels, operators shall place the materials in locations where they will not enter waters of the state.

(6) Operators shall construct effective sediment barriers such as water bars, dips, or other water diversion on stream crossing approaches after completion of operations, or prior to rainy season runoff, whichever comes first.

(7) Machine activity near (generally within 100 feet) streams, lakes, and other wetlands greater than one-quarter acre shall be conducted to minimize the risk of sediment entering waters of the state and preventing changes to stream channels. Operators shall only locate, construct, and maintain skid trails in riparian management areas consistent with the vesting rules.

(8) Operators shall minimize the amount of exposed soils due to skid trails within riparian management area. Except at stream crossings, operators shall not locate skid trails within 35 feet of Type F or Type D streams. Operators shall provide adequate distances between all skid trails and waters of the state to filter sediment from runoff water.

(9) Operators shall locate and construct skid trails so that when high stream flow occurs water from the stream will not flow onto the skid trail.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2630; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-660-0020; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-635-0130

Written Plans for Streams, Lakes, Wetlands and Riparian Management Areas

(1) Operators shall submit to the State Forester a written plan before conducting any operation requiring notification under OAR 629-605-0140(1) within:

(a) 100 feet of fish use or domestic water use streams (classified as Type F or Type D under OAR 629-635-0200), except as described in section (3) of this rule;

(b) 300 feet of significant wetlands;

(c) 100 feet of large lakes.

(2) In addition to the written plan requirements in OAR 629-605-0170, operators shall specifically describe in the written plan for operations within 100 feet of domestic water use portions of Type F or D streams the practices and methods that will be used to prevent sediment from entering waters of the state.

(3) The State Forester may waive, in writing, the requirement for a written plan within 100 feet of a Type F or Type D stream, if the State Forester determines the intended forest practice will not directly affect the physical components of the riparian management area. "Physical components" means materials such as, but not limited to, vegetation, snags, rocks, and soil. "Directly affect" means that physical components will be moved, disturbed, or otherwise altered by the operation activity, even if only temporarily.

(4) Written plans required under section (1)(a) and (1)(b) of this rule are subject to the process required for a written plan pursuant to ORS 527.670(8) through (12), and appeal pursuant to ORS 527.700.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-057-2030; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-640-0100

General Vegetation Retention Prescription for Type F Streams

(1)(a) Operators shall apply the vegetation retention requirements described in this rule to the riparian management areas of Type F streams.

(b) Segments of Type F streams that are different sizes within an operation shall not be combined or averaged together when applying the vegetation retention requirements.

(c) Trees left to meet the vegetation retention requirements for one stream type shall not count towards the requirements of another stream type.

(2) Operators shall retain:

(a) All understory vegetation within 10 feet of the high water level;

(b) All trees within 20 feet of the high water level; and

(c) All trees leaning over the channel.

(3) Operators shall retain within riparian management areas and streams all downed wood and snags that are not safety or fire hazards. Snags felled for safety or fire hazard reasons shall be retained where they are felled unless used for stream improvement projects.

(4) Notwithstanding the requirements of section (2) of this rule, vegetation, snags and trees within 20 feet of the high water level of the stream may be felled, moved or harvested as allowed in other rules for road construction, yarding corridors, temporary stream crossings, or for stream improvement.

(5) Operators shall retain at least 40 live conifer trees per 1000 feet along large streams and 30 live conifer trees per 1000 feet along medium streams. This includes trees left to meet the requirements described in section (2) of this rule. Conifers must be at least 11 inches DBH for large streams and 8 inches DBH for medium streams to count toward these requirements.

(6) Operators shall retain trees or snags six inches or greater DBH to meet the following requirements (this includes trees left to meet the requirements of sections (2) and (5) of this rule):

(a) If the live conifer tree basal area in the riparian management area is greater than the standard target shown in **Table 2** where the harvest unit will be a harvest type 2 or type 3 unit (as defined by ORS 527.620), or **Table 3** where the harvest unit will be a harvest type 1, partial harvest, or thinning, operators shall retain live conifer trees of sufficient basal area to meet the standard target.

(b) If the live conifer tree basal area in the riparian management area is less than the standard target (as shown in **Table 2** where the harvest unit will be a harvest type 2 or type 3 unit, or **Table 3** where the harvest unit will be a harvest type 1, partial harvest, or thinning) but greater than one-half the standard target shown in **Table 2**, operators shall retain all live conifer trees six inches DBH or larger in the riparian management area (up to a maximum of 150 conifers per 1000 feet along large streams, 100 conifers per 1000 feet along medium streams, and 70 conifers per 1000 feet along small streams).

(c) If live conifer tree basal area in the riparian management area is less than one-half the standard target shown in **Table 2**:

(A) Operators may apply an alternative vegetation retention prescription as described in OAR 629-640-0300 where applicable, or develop a site specific vegetation retention prescription as described in OAR 629-640-0400; or

(B) Operators shall retain all conifers in the riparian management area and all hardwoods within 50 feet of the high water level for large streams,

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within 30 feet of the high water level for medium streams, and within 20 feet of the high water level for small streams.

(7) In the Coast Range, South Coast, Interior, Western Cascade, and Siskiyou geographic regions, hardwood trees and snags six inches or greater DBH may count toward the basal area requirements in subsection (6)(a) of this rule as follows:

(a) All cottonwood and Oregon ash trees within riparian management areas that are beyond 20 feet of the high water level of large Type F streams, may count toward the basal area requirements.

(b) Up to 10 percent of the basal area requirement may be comprised of sound conifer snags at least 30 feet tall and other large live hardwood trees, except red alder, growing in the riparian management area more than 20 feet from the high water level and at least 24 inches DBH.

(8) In the Eastern Cascade and Blue Mountain geographic regions, hardwood trees, dying or recently dead or dying trees and snags six inches or greater DBH may count toward the basal area requirements in subsection (6)(a) of this rule as follows:

(a) The basal area of retained live hardwood trees may count toward meeting the basal area requirements.

(b) Up to 10 percent of the basal area retained to meet the basal area requirement may be comprised of sound conifer snags at least 30 feet tall.

(c) For small Type F streams, the maximum required live conifer tree basal area that must be retained to meet the standard target is 40 square feet. The remaining basal area required may come from retained snags, dying or recently dead trees, or hardwoods if available within the riparian management area.

(9) Notwithstanding the requirements indicated in this rule, operators may conduct precommercial thinning and other release activities to maintain the growth and survival of conifer reforestation within riparian management areas. Such activities shall contribute to and be consistent with enhancing the stand's ability to meet the desired future condition.

(10) When determining the basal area of trees, the operator may use the average basal area for a tree's diameter class, as shown in Table 4, or determine an actual basal area for each tree. The method for determining basal area must be consistent throughout the riparian management area.

(11)(a) For large and medium Type F streams, live conifer trees retained in excess of the active management target and hardwoods retained beyond 20 feet of the high water level of the stream that otherwise meet the requirements for leave trees may be counted toward requirements for leave trees within harvest type 2 or harvest type 3 units (pursuant to Section 9, Chapter 9, Oregon Laws 1996 Special Session).

(b) For small Type F streams, all retained live trees that otherwise meet the requirements for leave trees may count toward requirements for leave trees within harvest type 2 or harvest type 3 units (pursuant to Section 9, Chapter 9, Oregon Laws 1996 Special Session).

(12) Trees on islands with ground higher than the high water level may be harvested as follows:

(a) If the harvest unit is solely on an island, operators shall apply all the vegetation retention requirements for a large Type F stream described in this rule to a riparian management area along the high water level of the channels forming the island.

(b) Otherwise, operators shall retain all trees on islands within 20 feet of the high water level of the channels forming the island and all trees leaning over the channels. In this case, conifer trees retained on islands may count toward the basal area requirement for adjacent riparian management areas so long as the trees are at least 11 inches DBH for large streams and eight inches DBH for medium streams.

(13) When applying the vegetation retention requirements described in this rule to the riparian management areas, if an operator cannot achieve the required retention without leaving live trees on the upland side of a road that may be within the riparian management area and those trees pose a safety hazard to the road and will provide limited functional benefit to the stream, the State Forester may approve a plan for an alternate practice to modify the retention requirements on a site specific basis.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2230; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-640-0110

Live Tree Retention Credit for Improvement of Type F Streams

(1) Many Type F streams currently need improvement of fish habitat because they lack adequate amounts of large woody debris in channels, or they lack other important habitat elements.

(2) This rule allows operators incentives to place conifer logs in channels or to take other enhancement actions to create immediate improvements in fish habitat.

(3) When addressed in a written plan, operators may place conifer logs or downed trees in Type F streams and receive basal area credit toward meeting the live tree retention requirements in a stream's riparian management area.

(4) For each conifer log or tree the operator places in a large or medium Type F stream, the basal area credit is twice the basal area of the placed log or tree.

(5) For each conifer log or tree the operator places in a small Type F stream, the basal area credit is equal to the basal area of the placed log or tree.

(6) Basal area credit will be determined by measuring the cross-sectional area of the large end of a log or by measuring the point on a downed tree that would be equivalent to breast height.

(7) To receive basal area credit for downed trees or conifer logs placed in a stream, the operator shall comply with the guidance and restrictions for placing logs or trees prescribed by the State Forester.

(8) Operators may propose other stream enhancement projects for basal area credit such as creation of backwater alcoves, riparian grazing enclosures (such as fencing), and placement of other instream structure such as boulders and rootwads. When a project is addressed in a written plan and reviewed by the department in consultation with the Department of Fish and Wildlife, basal area credit shall be given toward meeting the live tree requirements within riparian management areas. The basal area credit shall be negotiated between the department, operator and Department of Fish and Wildlife.

(9) Basal area credit may be given to an operation for enhancement projects conducted at locations other than at the operation site so long as the project is in the same immediate vicinity as the operation site (for instance, within one or two miles of the operation).

(10) Basal area credit may be given to an operation for improvement projects conducted at a later date (this may be necessary to avoid operating under high water conditions or to protect spawning areas), but the project must be completed within six months of the completion of the operation.

(11) In granting basal area credit, the standing tree basal area retained within riparian management areas of Type F streams shall not be reduced to less than the active management targets shown in Table 2 or 3, as applicable.

(12) For small Type F streams in the Eastern Cascade and Blue Mountain geographic regions, the live conifer tree basal area may be reduced to 30 square feet for the active management target. The remaining portion of the basal area requirement must come from snags, dying or recently dead or dying trees, or hardwood trees if available in the riparian management area.

(13) Operators shall notify the State Forester of the completion of live tree retention credit stream improvement projects that were planned for locations other than on the operation site under section (9) of this rule or that were planned to be completed at another date under section (10) of this rule.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2240; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-640-0200

General Vegetation Retention Prescription for Type D and Type N Streams

(1)(a) Operators shall apply the vegetation retention requirements described in this rule to the riparian management areas of Type D and Type N streams.

(b) Segments of Type D or Type N streams that may be of a different size within an operation shall not be combined or averaged together when applying the vegetation retention requirements.

(c) Trees left to meet the vegetation retention requirements for one stream type shall not count toward the requirements of another stream type.

(2) Operators shall retain along all Type D, and large and medium Type N streams:

(a) All understory vegetation within 10 feet of the high water level;

(b) All trees within 20 feet of the high water level; and

(c) All trees leaning over the channel.

(3) Operators shall retain all downed wood and snags that are not safety or fire hazards within riparian management areas and streams. Snags felled for safety or fire hazard reasons shall be retained where they are felled unless used for stream improvement projects.

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(4) Notwithstanding the requirements of section (2), vegetation, snags and trees within 20 feet of the high water level of the stream may be felled, moved or harvested as allowed in the rules for road construction, yarding corridors, temporary stream crossings, or for stream improvement.

(5) Operators shall retain at least 30 live conifer trees per 1000 feet along large Type D and Type N streams and 10 live conifer trees per 1000 feet along medium Type D and Type N streams. This includes any trees left to meet the requirements described in section (2) of this rule. Conifers must be at least 11 inches DBH for large streams and eight inches DBH for medium streams to count toward these requirements.

(6) Operators shall retain all understory vegetation and non-merchantable conifer trees (conifer trees less than six inches DBH) within 10 feet of the high water level on each side of small perennial Type N streams indicated in Table 5.

(a) The determination that a stream is perennial shall be made by the State Forester based on a reasonable expectation that the stream will have summer surface flow after July 15.

(b) The determination in subsection (6)(a) of this rule can be made based on a site inspection, data from other sources such as landowner information, or by applying judgment based upon stream flow patterns experienced in the general area.

(c) Operators are encouraged whenever possible to retain understory vegetation, non-merchantable trees, and leave trees required within harvest type 2 or harvest type 3 units (pursuant to Section 9, Chapter 9, Oregon Laws 1996 Special Session) along all other small Type N streams within harvest units.

(7) Operators shall retain trees six inches or greater DBH to meet the following requirements (this includes trees left to meet the requirements of sections (2) and (5) of this rule):

(a) If the live conifer tree basal area in the riparian management area is greater than the standard target shown in **Table 6** where the harvest will be a harvest type 2 or type 3 unit (as defined by ORS 527.620), or in **Table 7** where the harvest unit is a harvest type 1, partial harvest, or thinning, operators shall retain along all Type D, and medium and large Type N streams live conifer trees of sufficient basal area to meet the standard target.

(b) If the live conifer tree basal area in the riparian management area is less than the standard target (as shown in **Table 6** where the harvest will be a harvest type 1 or type 2 unit or **Table 7** where the harvest unit is a harvest type 1, partial harvest, or thinning), but greater than one-half the standard target shown in Table 6, operators shall retain along all Type D, and medium and large Type N streams all conifers 6 inches DBH or larger in the riparian management area (up to a maximum of 100 conifers per 1000 feet along large streams, and 70 conifers per 1000 feet along medium streams).

(c) If the live conifer tree basal area in the riparian management area is less than one-half the standard target shown in Table 6:

(A) Operators may apply an alternative vegetation retention prescription as described in OAR 629-640-0300, where applicable, or develop a site specific vegetation retention prescription as described in OAR 629-640-0400; or

(B) Operators shall retain along all Type D, and medium and large Type N streams all conifers in the riparian management area and all hardwoods within 30 feet of the high water level for large streams and within 20 feet of the high water level for medium streams.

(8) In the Coast Range, South Coast, Interior, Western Cascade, and Siskiyou geographic regions, hardwood trees and snags six inches or greater DBH may count toward the basal area requirements in subsection (7)(a) of this rule as follows:

(a) All cottonwood and Oregon ash trees within riparian management areas that are beyond 20 feet of the high water level of large Type D and N streams, may count toward the basal area requirements.

(b) For large Type D and N streams, up to 10 percent of the basal area requirement may be comprised of sound conifer snags at least 30 feet tall and other large live hardwood trees, except red alder, growing in the riparian management area more than 20 feet from the high water level and at least 24 inches DBH.

(c) For medium Type D and N streams:

(A) Up to 30 square feet of basal area per 1000 feet of stream may be comprised of hardwood trees.

(B) Up to five percent of the basal area retained may be comprised of sound conifer snags that are at least 30 feet tall.

(9) In the eastern Oregon and Blue Mountain geographic regions:

(a) The basal area of all retained live hardwood trees may count toward meeting the basal area requirements.

(b) For large Type D and N streams, up to 10 percent of the basal area requirement may be comprised of sound conifer snags at least 30 feet tall.

(c) For medium Type D and N streams, up to five percent of the basal area retained may be comprised of sound conifer snags that are at least 30 feet tall.

(10) Notwithstanding the requirements indicated in this rule, operators may conduct precommercial thinning and other release activities to maintain the growth and survival of conifer reforestation within riparian management areas. Such activities shall contribute to and be consistent with enhancing the stand's ability to meet the desired future condition.

(11) When determining the basal area of trees along streams in a harvest unit, operators may use the average basal area for a tree's diameter class, as shown in Table 4 in OAR 629-640-0100, or determine an actual basal area for each tree. The method for determining basal area must be consistent throughout the riparian management area.

(12) All live trees retained along Type D and N streams that otherwise meet the requirements for leave trees may count toward requirements for leave trees within harvest type 2 or harvest type 3 units (pursuant to Section 9, Chapter 9, Oregon Laws 1996 Special Session).

(13) Trees on islands with ground higher than the high water level may be harvested as follows:

(a) If the harvest unit is solely on an island, operators shall apply all the vegetation retention requirements for a large Type F stream described in this rule to a riparian management area along the high water level of the channels forming the island.

(b) Otherwise, operators shall retain all trees on islands within 20 feet of the high water level of the channels forming the island and all trees leaning over the channels. In this case, conifer trees retained on islands may count toward the basal area requirement for adjacent riparian management areas so long as the trees are at least 11 inches DBH for large streams and 8 inches DBH for medium streams.

(c) All merchantable trees may be harvested from islands within small Type N streams.

(14) When applying the vegetation retention requirements described in this rule to the riparian management areas, if an operator cannot achieve the required retention without leaving live trees on the upland side of a road that may be within the riparian management area and those trees pose a safety hazard to the road and will provide limited functional benefit to the stream, **the operator may submit a plan for an alternate practice to the State Forester to modify the retention requirements on a site specific basis.**

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-057-2250; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-640-0400

Site Specific Vegetation Retention Prescriptions for Streams and Riparian Management Areas

(1)(a) Operators are encouraged to develop site specific vegetation retention prescriptions in a plan for an alternate practice.

(b) A primary aim of these prescriptions is to identify opportunities and allow incentives for restoring or enhancing riparian management areas or streams.

(c) Another purpose of site specific vegetation retention prescriptions is to allow for changes to the vegetation retention requirements in OARs 629-640-0100 and 629-640-0200. The changes must provide for the functions and values of streams and their riparian management areas as described in the vegetation retention goals for streams while affording a better opportunity to meet other objectives.

(2) Operators may develop site specific vegetation retention prescriptions for streams and their riparian management areas to achieve the vegetation retention goals described in OAR 629-640-0000 if:

(a) The potential of the streamside stand to achieve basal area and stand density similar to mature conifer forest stands in a "timely manner" is questionable; or

(b) In-stream conditions are impaired due to inadequate large woody debris or other factors; or

(c) The modification of a standard or practice would result in less environmental damage than if the standard or practice were applied.

(3) A plan for an alternate practice shall be approved if the State Forester determines that when properly executed the alternate plan will have no significant or permanent adverse effects and:

(a) It will meet or exceed the vegetation retention goals in a more "timely manner" than if the plan were not implemented; or

(b) The long-term benefits of the proposed restoration practice are greater than short-term detrimental effects; or

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(c) The proposed practice will result in less environmental damage than if the regular rules were followed.

(4) Factors that may need to be considered in the plan include, but are not limited to, the potential of the existing streamside stand to achieve mature conifer forest characteristics, the long-term supply of woody debris, survival of planted conifers, sensitivity to changes in water temperature and water quality, the potential for sedimentation, the stability of woody debris placed in aquatic areas, and monitoring the direct effects of the proposed practices.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.710, 527.765 & 919(9)

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2270; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-645-0000

Riparian Management Areas and Protection Measures for Significant Wetlands

(1)(a) The purpose of these rules is to protect the functions and values of significant wetlands, including wetlands larger than eight acres, estuaries, bogs and important springs in eastern Oregon on forestlands.

(b) Significant wetlands on forestlands provide a wide range of functions and values, including those related to water quality, hydrologic function, fish and other aquatic organisms, and wildlife.

(c) Estuaries are unique systems because they form transitions between terrestrial, marine, and freshwater environments. Because of this link, estuarine systems are among the most biologically productive in the world. Estuaries support many resident species. Estuaries also provide food, spawning area, and shelter for numerous other species at critical points in their life cycles. Removal of shoreline trees reduces the overall productivity of the estuary by reducing leaf and litter fall, thus depriving the estuary of substrate, and by removing feeding and resting habitat for birds and small mammals.

(d) Bog communities are a result of specific hydrologic, soil, and nutrient conditions. Bogs are usually saturated, low in nutrients, and highly acidic changes in runoff, sediment loading, and nutrient loading can alter the plant community composition. The peat soils have evolved over time. Compaction damages plant communities and may encourage the invasion of exotic species. Harvesting may disrupt shade tolerant vegetation, alter plant community characteristics, and hasten succession. Compaction, saturated conditions, and poor nutrient status make reforestation difficult.

(e) In arid parts of eastern Oregon, springs provide a critical source of water. These important springs have established wetland vegetation, flow year round in most years, and are used by a concentration of diverse animal species. By reason of sparse occurrence, important springs have a major influence on the distribution and abundance of upland species. Important springs shall be identified by the State Forester.

(2)(a) The goals of significant wetland protection are to maintain the functions and values of significant wetlands on forestlands over time, and to ensure that forest practices do not lead to resource site destruction or reduced productivity, while at the same time ensuring the continuous growth and harvest of forest tree species. To accomplish these goals, the rules focus on the protection of soil, hydrologic functions, and specified levels of vegetation.

(b) The intent of the rules is to minimize soil disturbance and to minimize disturbance to the natural drainage patterns of the significant wetland.

(c) Vegetation retention (including understory vegetation, snags, downed wood, and live trees) is needed to prevent erosion and sedimentation into the significant wetland, minimize soil disturbance and hydrologic changes, and to maintain components of the vegetation structure to provide for other benefits, particularly fish and wildlife values.

(3) Significant wetlands other than estuaries, bogs or important springs in eastern Oregon shall have riparian management areas extending 100 feet from the wetlands. When an operation is proposed within 300 feet of a significant wetland, the resource site evaluation process in OAR 629-665-0020 shall be followed by the landowner, operator or timber owner. If the proposed operation conflicts with the significant wetland, the operator shall submit a written plan to the State Forester before starting operations. The written plan shall comply with the requirements of OAR 629-605-0170, Written Plans.

(4) For all significant wetlands, operators shall provide the following to the wetlands and riparian management areas:

- (a) Live tree retention (OAR 629-645-0010);
- (b) Soil and hydrologic function protection (OAR 629-645-0030);
- (c) Understory vegetation retention (OAR 629-645-0040); and
- (d) Snag and down wood retention (OAR 629-645-0050).

(5) For forested significant wetlands, written plans must address reforestation.

(6) When an operation is proposed within 300 feet of an estuary, bog or important spring in eastern Oregon, the State Forester shall determine the riparian management area during the resource site inspection required by OAR 629-665-0020. Riparian management areas shall extend outward 100 to 200 feet from the estuary, 50 to 100 feet from the bog, or 50 to 100 feet from the important spring in eastern Oregon. The distance determination of the State Forester shall depend on:

(a) Stocking level of the timber stand adjacent to the estuary, bog or spring;

(b) Ability of the area to withstand windthrow;

(c) Size of the estuary, bog or spring. As the size increases, the size of the riparian management area shall increase; and

(d) For bogs and springs only, topography and erodibility of adjacent uplands.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2300; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-645-0020

Site-Specific Vegetation Retention Prescriptions for Significant Wetlands

(1) Operators are encouraged to develop site specific vegetation retention prescriptions for significant wetlands in a plan for an alternate practice.

(2) The functions and values of forested wetlands vary with species composition, stocking levels, and geographic location. Operators are encouraged to propose site specific vegetation retention prescriptions in a plan for an alternate practice that allow for changes to the live tree requirements in OAR 629-645-0010 and that provide equal or better protection of the functions and values of forested significant wetlands and forested stream-associated wetlands, and address operational concerns.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-057-2320; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-645-0030

Soil and Hydrologic Function Protection for Significant Wetlands

(1) In significant wetlands and their riparian management areas, operators shall protect soil from disturbances that result in impaired water quality, hydrologic functions, or soil productivity. Operators shall protect hydrologic functions by minimizing disturbances and shall prevent accelerating the natural conversion of the wetland to uplands.

(2) The written plan required under OAR 629-635-0130 shall describe how the operation will be conducted to prevent adverse effects on water quality, hydrologic functions or soil productivity. The following practices shall be addressed in written plans when they are proposed in significant wetlands:

(a) Filling within wetlands;

(b) Machine activity within wetlands; and

(c) Road construction within wetlands.

(3) Operators shall not drain significant wetlands.

(4) Notwithstanding subsection (3) of this rule, minor drainage for reforestation is allowed. Any drainage for reforestation must be designed so the significant wetland is not converted to an upland.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-057-2330; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-645-0050

Snag and Downed Wood Retention for Significant Wetlands

(1) For significant wetlands, operators shall retain all snags and downed trees within the wetlands and the applicable riparian management areas.

(2) Notwithstanding subsection (1) of this rule, any snag defined to be a safety hazard under the safety requirements found in OAR 437, division 7, Forest Activities, or determined to be a fire hazard by the State Forester, may be felled. Any snag felled because of a safety or fire hazard shall be left unyarded.

(3) The retention requirements in subsection (1) of this rule may be modified for reasons of forest health for trees that are dying or recently dead or dying because of fire, insect or disease epidemics, or other catastrophic events when addressed in a plan for an alternate practice approved by the State Forester.

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(4) Snags and downed wood left pursuant to subsection (1) of this rule may not be counted toward the requirements of Section 9, Chapter 9, Oregon Laws 1996 Special Session.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.715 & 527.765
Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2350; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-650-0040

Snag Retention and Downed Wood Retention for Lakes

(1) For lakes, operators shall retain all snags and downed trees within the lakes and the applicable riparian management areas.

(2) Notwithstanding subsection (1) of this rule, any snag defined to be a safety hazard under the safety requirements found in OAR 437, Division 7, Forest Activities, or determined to be a fire hazard by the State Forester, may be felled. Any snag felled because of a safety or fire hazard shall be unyarded.

(3) The retention requirements in subsection (1) of this rule may be modified for reasons of forest health for trees that are dying or recently dead because of fire, insect or disease epidemics, or other catastrophic events when addressed in a plan for an alternate practice approved by the State Forester.

(4) Snags and downed wood left pursuant to this rule may not be counted toward the requirements of Section 9, Chapter 9, Oregon Laws 1996 Special Session.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.715 & 527.765
Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2440; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-660-0040

Stream Channel Changes

(1) Operators shall not channelize, relocate, or divert water from any stream, except as allowed in the forest practice rules for construction of roads, stream improvement projects or temporary stream crossings.

(2) Operators shall not add to or remove soil or rock from any streams, except as allowed in the forest practice rules for construction of roads, stream improvement projects or temporary stream crossings.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.710 & 527.765
Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2650; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-660-0050

Beaver Dams or Other Natural Obstructions

(1) Except as needed for road maintenance, operators must submit a written plan to the State Forester prior to the removal of beaver dams and other natural obstructions from waters of the state during forest operations. Removal of any beaver dam that is within 25 feet of a culvert shall be considered to be needed for road maintenance.

(2) A written plan for removal of a beaver dam or obstruction must demonstrate:

(a) A beaver dam or obstruction threatens existing forests or plantations; or

(b) Beaver dam removal is part of a beaver population control program approved by the Oregon Department of Fish and Wildlife; or

(c) Retaining the beaver dam or obstruction would result in greater environmental harm than benefit.

(3) Sediment releases and downstream channel scouring can occur when beaver dams are removed. Operators are encouraged to use techniques that result in a gradual release of water when a dam is removed.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.710 & 527.765
Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2660; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-665-0020

Application of Protection and Exception Rules; State Forester Duties; Landowner, Timber Owner and Operator Duties

(1) When a landowner, timber owner or operator proposes an operation near a resource site that requires special protection, the State Forester shall inspect the resource site with the landowner or landowner's representative, the operator and when available, the appropriate representative of the Department of Fish and Wildlife. The State Forester shall:

(a) Identify the resource site.

(b) Apply the protection goal in OAR 629-665-0010.

(A) If the proposed forest practices do not conflict with the resource site, the operation will not be subject to the protection requirements for the

resource site. The operation shall be conducted in compliance with all other existing forest practice rules;

(B) If the proposed forest practices conflict with the resource site, the structural and temporal protection requirements for the resource site shall be required to eliminate the conflict;

(C) When the proposed forest practices conflict with a resource site, the landowner or operator may request a structural or temporal exception through a plan for an alternate practice, if the applicable administrative rule provides for such an exception.

(D) The State Forester shall document and maintain on file the reasons for granting or denying all exceptions.

(2) If the proposed operation conflicts with the resource site, the operator shall submit a written plan to the State Forester before starting operations. The written plan shall comply with the requirements of OAR 629-605-0170, Written Plans.

(3) When the written plan in subsection (2) of this rule does not follow the written recommendations of the Department of Fish and Wildlife or other responsible coordinating state agency, the State Forester shall maintain on file a written explanation of the reasons for:

(a) Differences in the identification of the resource site; and

(b) Different protection levels required for the resource site.

(4) When a resource site is discovered by the operator, timber owner or landowner during a forest operation, the party making the discovery shall:

(a) Immediately protect all remaining trees within 300 feet of the resource site and submit to the State Forester a written plan for the resource site; and

(b) Immediately notify the State Forester.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.715
Hist.: FB 6-1990, f. 8-1-90, cert. ef. 1-1-1991; FB 1-1991, f. & cert. ef. 5-23-91; FB 7-1991, f. & cert. ef. 10-30-91; FB 9-1991, f. & cert. ef. 11-18-91, Renumbered from 629-024-0705; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0699; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-665-0110

Osprey Resource Sites; Key Components; Protection Requirements; Exceptions

(1) For osprey, the resource site is the active nest tree and any identified key components.

(a) An active nest tree is one that has been used by osprey within the past five (5) nesting seasons. No protection is required for abandoned resource sites.

(b) The key components associated with an osprey resource site are perching and fledging trees and replacement trees. Factors to consider when identifying key components:

(A) Actual observation data if available;

(B) Perching trees should provide for maximum visibility of the surrounding terrain and structure that allows the osprey easy access, such as large, tall snags or trees that have broken or dead tops, forks, or lateral branches high in the crown;

(C) Replacement trees should provide maximum visibility of the surrounding terrain, and be large enough to support an osprey nest;

(D) Perching and fledging trees and replacement trees should be located within 600 feet of the active nest tree;

(E) Areas of high winds may require that additional trees be retained to protect the resource site from damage.

(2) When the State Forester identifies the resource site as per OAR 629-665-0020, the operator shall provide the following protection measures:

(a) Retain the active nest tree; and

(b) Retain no fewer than eight additional trees as key components (i.e.: perching, fledging and replacement trees).

(c) During forest operations, the resource site shall be protected from damage. The operation shall be designed to protect these trees from wind-throw;

(d) During the critical period of use, the active nest tree and any perch tree identified as a key component shall be protected from disturbance. From March 1st through September 15th, forest operations shall not be permitted within 600 feet of the active nest tree or perch tree unless the State Forester determines that the operations will not cause the birds to flush from these trees. The critical period of use may be modified in writing by the State Forester as the resource site is evaluated as per OAR 629-665-0020.

(3) The State Forester shall not permit structural exceptions for the resource site: Removal of a resource site may be permitted if replacement nest trees, artificial structures, or replacement key components are provided.

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ed by the operator or landowner. Replacement is not considered an exception, since the productivity of the nesting territory is maintained. When addressed in a plan for an alternate practice, replacement may be considered by the State Forester when:

(a) Alternate forest practices which retain and protect the resource site are not economically feasible; and

(b) The productivity of the nesting territory is not reduced.

(4) Temporal exceptions for the resource site may be approved by the State Forester when addressed in a plan for an alternate practice that demonstrates:

(a) Nest disruption or failure for a season does not affect the local population; and

(b) There are no economically feasible forest practices that avoid disturbance to the resource site during the critical period of use.

(5) Factors considered by the State Forester before approving a plan for an alternate practice under section (4) of this rule shall include, but are not limited to:

(a) The size of the local population;

(b) The contribution of the resource site in question to the local population; and

(c) The feasibility of alternate forest practices that do not cause disturbance.

(6) The State Forester shall document all requests and decisions concerning structural or temporal exceptions. All approved structural replacements shall be documented.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 6-1990, f. 8-1-90, cert. ef. 1-1-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0710; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-665-0120

Great Blue Heron Resource Sites; Key Components; Protection Requirements; Exceptions

(1) For the great blue heron, the resource site is the active nest tree(s) and any identified key components.

(a) An active nest tree is one that has been used by one or more pair of great blue heron within the past three nesting seasons. No protection is required for an abandoned resource site.

(b) The key components associated with a great blue heron resource site are the nest tree(s), a vegetative buffer around the nest tree(s) including perching and fledging trees, and replacement tree(s). Factors to consider when identifying key components:

(A) Actual observation data when available;

(B) Perching, fledging, and replacement tree(s) should be tall with plenty of space for these large birds to fly into and out. Older trees with open branching should be retained;

(C) Areas of high winds may require that additional trees be retained to protect the active nest tree and identified key components from damage.

(2) The operator shall provide the following protection measures when operating within or near a great blue heron resource site:

(a) Retain the active nest tree;

(b) Retain a vegetative buffer not less than 300 feet around the outermost nest trees as key components that includes perching and fledging trees, and replacement trees.

(c) The vegetative buffer around a rookery may be actively managed if the key components in subsection (1) are protected. When conducting forest management activities within this buffer, operators shall consider heron protection as the highest priority. The vegetative buffer needs to provide a visual screen from disturbing influences around the rookery, and must be designed to protect the nest tree(s), perching, fledging, and replacement tree(s) from windthrow. Examples of forest management activities that may occur within the vegetative buffer include tree topping, and/or other methods of "feathering" the outer edges of the buffer to reduce windthrow potential, or remove individual trees (especially along the edge of the buffer) if the integrity of the buffer is maintained and all the key components are adequately protected. Input from the ODFW wildlife biologist and ODF's fish and wildlife specialist is important when marking trees to be removed from this buffer.

(d) During and after forest operations, the resource site shall be protected from damage. The operation shall be designed to protect the key components from windthrow;

(e) During the critical period of use, operations shall be designed and conducted so as not to disturb great blue herons using the key components. From February 15 through July 31, forest operations shall not be permitted within one-quarter (1/4) mile of the active nest tree(s) unless the State Forester determines that the operations will not cause the birds to flush

from these trees. The critical period of use may be modified by the State Forester after the resource site is evaluated following OAR 629-665-0020.

(3) Structural exceptions for the resource site may be approved by the State Forester when addressed in a plan for an alternate practice. The State Forester may approve such a plan when these criteria are met:

(a) The site contains five nests or fewer;

(b) The State Forester determines that the loss of the site will not adversely affect the local population; and

(c) There are no economically feasible alternatives that maintain the key components.

(4) Factors considered by the State Forester before approving a structural exception to protection of a great blue heron resource site shall include, but are not limited to:

(a) The size of the site (number of nests);

(b) The size of the breeding population in the local area;

(c) The productivity of great blue herons in the local area;

(d) The contribution of the site to local productivity;

(e) The probability that protection measures will be successful;

(f) Available alternate nesting sites; and

(g) Whether alternatives that protect the site are economically feasible.

(5) Temporal exceptions to protection of a great blue heron resource site may be approved by the State Forester when addressed in a plan for an alternate practice. The State Forester may approve such a plan when:

(a) The State Forester determines that nest disruption or failure for a season or site abandonment will not adversely affect the local population; and

(b) There are no economically feasible alternatives that will not disturb the birds during the critical period of use.

(6) Factors considered by the State Forester before approving a temporal exception shall include, but are not limited to:

(a) The size of the site (number of nests);

(b) The size of the breeding population in the local area;

(c) The productivity of great blue herons in the local area;

(d) The contribution of the site to local productivity; and

(e) Whether alternatives that protect the site are economically feasible.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 2-1991, f. & cert. ef. 5-23-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0711; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-665-0210

Interim Requirements for Northern Spotted Owl Nesting Sites

(1) Whenever the State Forester determines that an operation will conflict with protection of a nesting site of the northern spotted owl (*Strix occidentalis caurina*), the operator must submit to the State Forester a written plan before commencing the operation. The written plan, at a minimum, must address how the operation will be conducted to provide for the following:

(a) A 70 acre area of suitable spotted owl habitat encompassing the nest site, to be maintained as suitable spotted owl habitat;

(b) Prevention of disturbances resulting from operation activities which cause owls to flush from the nesting site. Such disturbances must be prevented during the critical period of use for nesting. The critical period of use is the time period between March 1 and September 30, each year.

(2) For the purposes of this rule, nesting site means and includes the tree, when known, containing a spotted owl nest; or when not specifically known, includes an activity center of a pair of adult spotted owls. An activity center is a location determined by the State Forester to have been reliably identified as being occupied by an adult pair of spotted owls, capable of breeding. Such determination must be supported by repeated observation of the owls in close proximity or observation of nesting behavior.

(3)(a) For the purposes of this rule, suitable spotted owl habitat means and includes:

(A) A stand of trees with moderate to high canopy closure (60 to 80%); a multi-layered, multi-species canopy dominated by large overstory trees (greater than 30 inches in diameter at breast height); a high incidence of large trees with various deformities (e.g., large cavities, broken tops, and other evidence of decadence); numerous large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly; or

(B) In the absence of habitat which exhibits all the characteristics listed above, the available forested habitat which comes closest to approximating the listed conditions.

ADMINISTRATIVE RULES

(b) Stands which do not exhibit at least two of the characteristics listed in paragraph (a)(A) of this section are not suitable habitat.

(4) (For information only) Federal law prohibits a person from taking northern spotted owls. Taking under the federal law may include significant alteration of owl habitat on any class of land ownership. Compliance with subsection (1) of this rule is not in lieu of compliance with any federal requirements related to the federal Endangered Species Act.

(5) Exceptions to the requirements for protecting northern spotted owl nesting sites are allowed if the operator is in compliance with, and has on file with the State Forester, an applicable incidental take permit issued by federal authorities under the Endangered Species Act.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 11-1990(Temp), f. 12-20-89, cert. ef. 12-21-90; FB 5-1991, f. & cert. ef. 6-6-91;

FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0809; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-665-0220

Bald Eagle Nesting Sites; Key Components; Protection Requirements; Exceptions

(1) For bald eagle nesting sites, the resource site is the active nest tree and all identified key components:

(a) An active nest tree is one in which a bald eagle has nested in the past, and that the State Forester determines to be structurally capable of successful future use, whether or not the tree still contains a nest.

(b) An active nest tree may fall down or may become structurally incapable of supporting a bald eagle nest site. When this happens the nest resource site shall be considered active and shall be protected for an additional five (5) years only if the site contains suitable nesting sites. In this case, if a nesting resource site is not used during this five-year period, the site shall be considered abandoned and no protection will be required.

(c) The key components associated with a bald eagle nesting site are perching and fledging trees, replacement nest trees, and a forested buffer around the nest tree. Factors to consider when identifying key components:

(A) Actual observation data when available.

(B) Perching and fledging trees should be tall enough to provide maximum visibility of the surrounding area. Perching and fledging trees are often snags or decadent live trees with exposed, strong, lateral branches high in the crown.

(C) Replacement nest trees should provide maximum visibility of the surrounding terrain, and be large enough to support a bald eagle nest. Bald eagles prefer to nest in large, tall trees that are alive, with large limbs, broken tops, or irregular growth patterns with open structure.

(D) Areas of high winds may require that additional trees be retained to protect the active nest tree(s) and identified key components from damage.

(2) The operator shall provide the following protection measures when operating within or near a bald eagle nesting site:

(a) During and after forest operations, the resource site shall be protected from damage. The operation shall be designed to protect the trees from windthrow;

(b) Retain the active nest tree.

(c) Retain a forested buffer not less than 330 feet around the active nest tree as a key component that includes perching, fledging, and replacement tree(s).

(d) During the critical period of use, operations shall be designed and conducted to not disturb bald eagles using the resource site:

(A) Except as provided in paragraph (B) of this subsection, during the critical period of use, operations shall not be permitted within one-quarter (1/4) mile of the active nest tree or perch trees. If the eagles have line-of-sight vision from these trees to the operation, the distance is one-half (1/2) mile.

(B) If the State Forester determines through review of the written plan that the operations will not cause the birds to flush from the trees identified in paragraph (A) of this section, then there is no conflict and the distance restrictions in paragraph (A) of this section may be modified.

(C) The critical period of use is January 1 through August 31. The specific critical period of use for individual nesting resource sites may be modified in writing by the State Forester depending upon the actual dates that bald eagles are present at the resource site and are susceptible to disturbance.

(3) Structural or temporal exceptions for the resource site are allowed if the operator is in compliance with, and has on file with the State Forester, an applicable incidental take permit issued by federal authorities under the Endangered Species Act.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 7-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0811; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-665-0230

Bald Eagle Roosting Sites; Key Components; Protection Requirements; and Exceptions

(1) For bald eagle roosting sites, the resource site is the active roost trees, probable roost trees as identified by the State Forester, and all identified key components:

(a) An active roosting site is one that has been used within the past 5 years for roosting by bald eagles. No protection is required for an abandoned bald eagle roosting site.

(b) The key components associated with a bald eagle roosting site are staging trees, probable roost trees as identified by the State Forester, and a forested buffer around the roost trees. Factors to consider when identifying key components:

(A) Actual observation data when available.

(B) Roost sites frequently occur in mature forests. Roost trees are often significantly larger than the rest of the stand.

(C) Staging trees are often large, dead-top or dominant trees or snags where one or more eagles can perch and have direct access to the roosting site.

(D) The surrounding forested buffer must be adequate to maintain a suitable microclimate around the roost trees

(E) Areas of high winds may require that additional trees be retained to protect the active roost tree(s) and identified key components from damage.

(2) The operator shall provide the following protection measures when operating within or near a bald eagle roosting site:

(a) During and after forest operations, the resource site shall be retained and protected from damage. The operation shall be designed to protect the trees from windthrow.

(b) Retain the active roost tree(s)

(c) Retain a forested buffer not less than 300 feet around the outermost active roost trees as a key component that includes probable roost trees.

(d) Retain staging trees.

(e) During the critical period of use, operations shall be designed and conducted to not disturb bald eagles using the resource site:

(A) Except as provided in paragraph (B) of this subsection, during the critical period of use, operations shall not be permitted within one-quarter (1/4) mile of the active roost trees. If the eagles have line-of-sight vision from these trees to the operation, the distance is one-half (1/2) mile.

(B) If the State Forester determines through review of the written plan that the operations will not cause the birds to flush from trees identified in paragraph (A) of this subsection, then there is no conflict and the distance restrictions in paragraph (A) of this subsection may be modified.

(C) The critical period of use for bald eagle roosting sites in the Klamath Basin is October 31 through March 31. In other areas of Oregon the critical period of use is November 15 through March 15. The specific critical period of use for individual roosting resource sites may be modified in writing by the State Forester depending upon the actual dates that bald eagles are present at the resource site and are susceptible to disturbance.

(3) Structural or temporal exceptions for the resource site are allowed if the operator is in compliance with, and has on file with the State Forester, an applicable incidental take permit issued by federal authorities under the Endangered Species Act.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 7-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0812; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-665-0240

Bald Eagle Foraging Perches; Key Components; Protection Requirements; and Exceptions

(1) For bald eagle foraging perches, the resource site is the active foraging perch. An active foraging perch is one that is habitually used by eagles as a vantage point while hunting. No protection is required for abandoned bald eagle foraging perches. The presence or absence of foraging perches within or near a foraging area shall be determined by the State Forester when the forester conducts an operation inspection. Factors to consider when identifying key components:

(a) Actual observation data when available.

(b) Bald eagles usually perch in the tallest trees on the edge of forest stands overlooking the hunting area. Snags and dead-top trees are often used.

ADMINISTRATIVE RULES

(c) Areas of high winds may require that additional trees be retained to protect the active foraging perch from damage.

(2) The operator shall provide the following protection measures when operating near a bald eagle foraging perch:

(a) During and after forest operations, the foraging perch shall be retained and protected from damage. The operation shall be designed to protect the foraging perch from windthrow.

(b) During the critical period of use, operations shall be designed and conducted so they do not cause excessive disturbance to bald eagles using the foraging area. The critical period of use shall be determined on a site specific basis. The critical period of use varies for each bald eagle foraging area, depending on whether the foraging area is used by nesting, wintering, or migrating bald eagles.

(3) Temporal exceptions for the entire foraging areas shall not be permitted by the State Forester. Temporal protection is determined by evaluating the potential disturbance to the entire foraging area used by a breeding pair or wintering population of bald eagles. Disturbance at a single foraging perch in a foraging area may be determined by the State Forester to not cause a conflict. This evaluation shall be based on the number of alternative foraging perches in the bald eagle foraging area.

(4) Structural exceptions for an active foraging perch may be permitted if the State Forester determines that adequate replacement foraging perches will remain in the vicinity after completion of the forest operation.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 7-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0813; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-670-0010

Definitions

As used in OAR chapter 629, divisions 670 through 680:

(1) "Board" means the State Board of Forestry.

(2) "Damage" means an adverse disturbance to a resource protected by the Oregon Forest Practices Act that cannot be immediately stabilized and corrected, resulting from a forest practice that is not in compliance with the Oregon Forest Practices Act or the forest practice rules.

(3) "Forest practice rule" means any rule regulating operations under the Oregon Forest Practices Act, as found in OAR chapter 629, divisions 600 through 680.

(4) "Operation" means any commercial activity relating to the establishment, management or harvest of forest tree species except as provided by the following:

(a) The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.

(b) The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood that is:

(A) Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;

(C) Harvested on a rotation cycle that is 12 or fewer years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.

(c) The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.

(d) The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.

(e) The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.

(f) The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.

(g) The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.

(5) "Operator" means any person, including a landowner or timber owner, who conducts an operation.

(6) "Plan for an Alternate Practice" means a document prepared by the landowner, operator or timber owner, submitted for approval in writing

by the State Forester describing practices different than those prescribed in statute or administrative rule.

(7) "State Forester" means the State Forester or the duly authorized representative of the State Forester.

(8) "Timely corrective action" means action to be taken by the operator within a specified time to prevent or reverse the damage potentially caused by an unsatisfactory condition.

(9) "Unsatisfactory condition" means the circumstance which exists when an operator or landowner fails to comply with a practice specified in a forest practice rule or statute listed in ORS 527.990(1) or 527.992 and the State Forester determines that all of the following conditions exist:

(a) The forest practice rule or statute applies to the type of operation conducted;

(b) The practice is necessary to meet the purpose of the statute or rule; and

(c) The operator has not been exempted from the rule or statute by obtaining approval for, or having obtained approval has not followed, a plan for an alternate practice as prescribed by OAR 629-605-0100.

(10) "Violation" means the circumstances which exist any time one or more of the following occurs:

(a) An operator fails to comply with any provision of ORS 527.670(6) or (7) requiring notification to the State Forester before commencing an operation.

(b) An unsatisfactory condition exists, and:

(A) Damage has resulted; or

(B) The State Forester has determined that it is not feasible for the operator, by timely corrective action, to eliminate the consequences of the unsatisfactory condition; or

(C) A written statement of unsatisfactory condition has been issued to the operator, the deadline for action has passed and appropriate action has not been taken by the operator.

(c) The operator has failed to follow a procedural practice required in statute or rule including, but not limited to, failure to submit a required written plan.

(d) An operator has failed to comply with any term or condition of any order of the State Forester issued in accordance with ORS 527.680.

(11) "Written statement of unsatisfactory condition" means a written statement issued by the State Forester to a landowner or an operator that describes the nature of an unsatisfactory condition and that specifies the corrective action to be taken within a definite time limit.

Stat. Auth.: ORS 527.710 & 526.016

Stats. Implemented: ORS 527.685 & 527.715

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0005; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 7-1998, f. 3-31-98, cert. ef. 5-1-98; DOF 7-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-670-0015

Enforcement Policy

Effective administration of the Oregon Forest Practices Act and forest practice rules is a balance of technical design, education and enforcement. The forest practice rules require compliance with a practice specified in a rule unless a plan for an alternate practice has been approved in writing by the State Forester. However, it is very difficult to write rules which deal with every conceivable situation and unlikely that the State Forester can monitor every forest operation in Oregon. The board recognizes that it is appropriate that the State Forester exercises judgment in not enforcing compliance with practices in a rule where the practice is clearly not necessary to accomplish the purpose of the rule. At the same time, without written approval for an alternate practice, such a recognition by the board shall not be a defense for an operator who has not complied with a practice.

Stat. Auth.: ORS 527.710, 526.016(4), 527.714 & 527.715

Stats. Implemented: ORS 527.680, 527.683, 527.685, 527.990 & 183.310 - 183.550

Hist.: DOF 7-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-670-0100

Inspections; Compliance Determination

(1) The State Forester shall conduct investigations of reported Oregon Forest Practices Act violations and make preventative and compliance inspections on forest operations subject to the Oregon Forest Practices Act.

(2) When inspecting operations, the State Forester shall examine practices used by the operator to assess compliance with the applicable forest practice rules and plans for an alternate practice. The State Forester may make recommendations that would help the operator avoid an unsatisfactory condition.

ADMINISTRATIVE RULES

(3) When the State Forester determines that an unsatisfactory condition or a violation exists, enforcement action shall be initiated by the State Forester.

Stat. Auth.: ORS 527.710 & 526.016

Stats. Implemented: ORS 527.680

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0010; DOF 7-1998, f. 3-31-98, cert. ef. 5-1-98; DOF 7-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-670-0115

Using the Written Statement of Unsatisfactory Condition to Prevent Damage

(1) Enforcement action may be initiated by the State Forester by issuing and serving a written statement of unsatisfactory condition to the landowner or operator when the State Forester determines that:

(a) A specific operating practice prescribed by a rule or statute, or a condition described in an approved plan for an alternate practice, has not been followed; and

(b) Noncompliance with a rule has resulted in adverse resource disturbance that is very limited in extent and that can be immediately stabilized and corrected; or

(c) Through timely corrective action the operator can eliminate the potential for resource damage or other consequences due to compliance failure. The State Forester may consider expected weather and site conditions, availability of equipment, expertise to accomplish work, and access to the site before requiring corrective action.

(2) A written statement of unsatisfactory condition shall contain:

(a) The nature of the unsatisfactory condition;

(b) The corrective action to be taken by a specific date; and

(c) A notice that a citation will be issued if damage results before corrective action is completed, or if corrective action is not completed by the specific date.

(3) If the operator completes the corrective action described in the written statement of unsatisfactory condition, it is not necessary to issue a citation or assess a civil penalty.

Stat. Auth.: ORS 527.710 & 526.016

Stats. Implemented: ORS 527.680, 527.683, 527.990 & 527.992

Hist.: DOF 7-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-670-0125

Using the Written Statement of Unsatisfactory Condition for Noncompliance with Procedural Rules

(1) Some forest practice rules deal with administrative procedures rather than resource protection. Rules requiring notification, written plans and plans for an alternate practice are examples of procedural rules which, if not complied with, may or may not result in resource damage.

(2) Compliance with these procedural rules is essential if the Oregon Forest Practices Act program is to succeed in educating forest landowners and operators, preventing resource damage before it occurs, and fulfilling its legal obligations to keep other agencies and interested citizens informed about planned operation activities.

(3) The board's intent is that violations of procedural rules should result in the issuance of a citation in most instances. However, the State Forester has the option of using the written statement of unsatisfactory condition, described in OAR 629-670-0110, as the enforcement action when the State Forester determines the following conditions exist:

(a) Resource damage from failure to comply with the procedural rule did not, and will not, occur;

(b) The written statement of unsatisfactory condition will result in immediate compliance with the procedural rule and will be adequate to educate the operator about the rule that was not complied with and to favorably modify the operator's future behavior;

(c) The operator had no prior knowledge or only general knowledge of the Oregon Forest Practices Act and rules and has not had significant past experience with the practice in question, or the operator has had significant past experience with the practice, but the violation was inadvertent or accidental;

(d) The rule violation did not result in a greater economic benefit for the operator than if the operator had complied with the procedural rule; and

(e) Noncompliance with the procedural rule has not denied a person an opportunity to receive a copy of a notification or written plan under ORS 527.670(9) before the operation began, if that person has previously requested copies for the purpose of commenting on the operation.

(4) If the operator or landowner reports to the State Forester an unsatisfactory condition that meets the requirements in section (3) of this rule, the State Forester may issue a written statement of unsatisfactory condition.

Stat. Auth.: ORS 527.710, 526.016(4), 527.714 & 527.715

Stats. Implemented: ORS 527.680, 527.683, 527.685, 527.990 & 183.310-550

Hist.: DOF 7-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-670-0210

Amount of Civil Penalties

(1) The amount of civil penalty per violation shall be the lesser of \$5000 or the amount determined by the formula $\$B(C \times P) + (\$B \times D \times R)$ where:

(a) \$B is a base fine established by type of violation in section (2) of this rule;

(b) C is cooperation;

(c) P is prior knowledge or prior violations;

(d) D is damage to protected resources; and

(e) R is the extent of damage that cannot be corrected, or prevented in the future, even though repairs are made.

(2) The base penalty value (\$B) shall be established as follows:

(a) A base penalty of \$100 shall be applied to violations of a type where the operator fails to notify the State Forester of intent to operate or fails to submit a required written plan or obtain written approval of a plan for an alternate practice.

(b) A base penalty of \$250 shall be applied to:

(A) Violations of any rule or statute which requires or sets standards for accomplishing reforestation.

(B) Violations involving a failure to comply with the terms or conditions of any order of the State Forester issued in accordance with ORS 527.680.

(C) Violations of a type where the operator fails to comply with any term or condition of an approved plan for an alternate practice.

(D) Violations where the State Forester determines that an operator has intentionally failed to notify the State Forester of intent to operate, notwithstanding subsection (2)(a) of this rule.

(E) All other violations of forest practice rules or statutes not specifically described in section (2) of this rule.

(c) A base penalty of \$1000 shall be applied to violations of any rule or statute which sets a maximum size for harvesting operations.

(3) The cooperation value (C) shall be determined by the State Forester after reviewing whether the operator is taking all feasible steps or procedures necessary or appropriate to correct the violation for which the penalty is being assessed. The value shall be assigned as follows:

(a) A value of 0.5 shall be assigned when, in the judgment of the State Forester, the operator takes substantial initiative to correct the damage or problem that led to the violation. Substantial initiative may include, but is not limited to, reporting the violation before it is discovered, initiating effective repairs without having to be directed, or making substantive changes in operating procedures designed to identify and avoid potential recurrences.

(b) A value of 1 shall be assigned when the operator cooperates in following the direction of the State Forester by immediately ceasing further violation and taking prompt action to repair damage or correct any unsatisfactory condition where deemed feasible by the State Forester.

(c) A value of 2 shall be assigned when the State Forester determines that the operator does not immediately cease further violation, is evasive upon attempts to make necessary communications, or neglects to take necessary and timely action to repair damage or correct any unsatisfactory condition.

(4) The prior knowledge value (P) shall be determined by the State Forester after reviewing department records of citations, operation notification or operation inspections. A value from 0.5 through 10 shall be assigned as follows:

(a) A value of 0.5 is appropriate when the operator has little or no prior knowledge of the Oregon Forest Practices Act but has cooperated in ceasing violation and correcting unsatisfactory conditions.

(b) A value of 1 is appropriate when the operator has general knowledge of the Oregon Forest Practices Act and rules, but has not had significant past experience with the practice in question, or has significant past experience with the practice, but the violation is determined by the State Forester to be inadvertent or accidental.

(c) A value of 2 is appropriate when the operator has had significant past experience with a practice or condition, or has had specific correspondence or conversation with department personnel about the required practices or actions involved in the violation, before the violation.

(d) A value of 4 is appropriate when the State Forester has issued a written statement of unsatisfactory condition to the operator for the violation and timely corrective action was not taken.

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(e) A value from 3 through 5 is appropriate when the operator has received citations for any other forest practice rule or statute within the past three years.

(f) A value from 5 to 10 shall be assigned when the operator has been cited within the past three years for a violation of the same forest practice rule, statute, or condition; or in a case of failure to comply with an order to cease further violation, or order to repair damage, or order to correct an unsatisfactory condition (ORS 527.680(2)).

(5) The damage value (D) shall be determined by the State Forester as a measure of extent or relative adverse effect of damage. The specific value applied shall be based on the pre-operation condition of the site, if known, the severity and extent of damage associated with the violation, and any potential economic gain to any involved operators. The damage value should be consistent with the policy of deterring future violations. A value from 0 through 20 shall be assigned. The following shall guide the State Forester's determination:

(a) A value of zero shall be assigned when the violation has not resulted and will not result in resource damage.

(b) A value of 1 shall be assigned when the adverse effects of the violation left uncorrected are minor and the affected resources will naturally self-restore within one year. Example: Siltation from exposed soil flows into the upper reaches of a stream, but the site will naturally revegetate within the next growing season, preventing further siltation.

(c) A value from 2 to 5 shall be assigned when the damage from the violations left uncorrected is more serious than described in subsection (b) of this section, but the affected resources will self-restore naturally within five years. Examples: A small volume debris avalanche is caused by road construction material placed in an unstable location and the debris comes to rest in a fish-bearing or domestic use water; or logs are skidded across a stream without an adequate temporary crossing leaving ruts and disturbed soil areas that will flow muddy water directly into the stream.

(d) A value from 5 through 10 shall be assigned when the damage from the violation left uncorrected is major in relative effect, with natural self-restoration taking up to 10 years. A consideration in selecting a value from 5 to 10 may include, but is not limited to the size of the area affected. Examples: Failure to reforest five acres may be assigned no less than a 5, while failure to reforest 50 acres may be assigned a 10. Removal of understorey vegetation along 500 feet of a small stream may be assigned a 10.

(e) A value from 5 through 20 shall be assigned when damage is the result of harvest or destruction of trees or snags required to be maintained; or when the damage from the violation left uncorrected is major in relative effect, with self-restoration taking more than 10 years. Example: Severe riparian management area soil disturbance, combined with the total harvest or destruction of what had been a fully stocked stand of trees required to be maintained, along more than 500 feet of a small stream may be assigned a factor of 20.

(6) The repair value (R) shall be assigned by the State Forester as a measure of the relative extent of the damage that is corrected or prevented through timely corrective action. The value shall be set by the State Forester between 0 and 1, inclusive and expressed as a decimal. The decimal indicates the degree of damage that already occurred and future damage that cannot be prevented, even after the repairs are completed as directed in the repair order. Example: A tractor crossed a stream with no temporary structure, breaking the stream banks down, leaving exposed skid trails which eroded, creating turbidity, and leaving visible sediment in the stream. With no repairs, the stream bank and skid trails would revegetate in 4 years. The landowner performed all repairs as ordered, including mulching, placing rip-rap, and building waterbars. In the State Forester's judgement, compliance with the repair order will prevent all but 20% of the potential damage expected over the next 4 years. Therefore R equals 0.20. If repairs are not feasible or are not completed, R equals 1.0.

Stat. Auth.: ORS 527.710 & 526.016

Stats. Implemented: ORS 527.685

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88; FB 5-1990, f. 7-27-90, cert. ef. 8-1-90; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0040; DOF 7-1998, f. 3-31-98, cert. ef. 5-1-98; DOF 7-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-672-0100

Orders of the State Forester

(1) As used in OAR 629-672-0100 to 629-672-0310, order of the State Forester issued under ORS 527.610 to 527.770 means:

(a) An order denying approval of a plan for an alternate practice (OAR 629-605-0173(3)).

(b) An order to repair damage or correct unsatisfactory condition (ORS 527.680(2)(b)).

(c) Temporary order to cease further activity (ORS 527.680(3)).

(d) An order prohibiting new operations (ORS 527.680(5)).

(e) An order denying approval of a stewardship agreement (ORS 527.662(13)).

(2) Whenever an order affecting an operator, timber owner or landowner is issued under ORS 527.610 to 527.770, notice of the order shall be given to the affected party by personal service or certified mail. As used in this section, 'personal service' means service on the party by any officer, employee, or agent of the Oregon State Department of Forestry. The notice shall include:

(a) A reference to the particular sections of the statute, rule, standard, order or permit involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the person's right to request a hearing within 30 days from the date of service;

(d) A statement that the notice becomes a final order unless the person makes a written request for a hearing within 30 days from the date of service or mailing of the notice; and

(e) A statement that the record of the proceedings to date, including the agency file on the subject of the order automatically becomes part of the contested case record upon default, for the purpose of providing a prima facie case.

Stat. Auth.: ORS 526.016 & 526.041

Stats. Implemented: ORS 527.662

Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0100; DOF 7-1998, f. 3-31-98, cert. ef. 5-1-98; DOF 3-1999, f. & cert. ef. 7-13-99; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-672-0200

Hearings for Operators, Landowners or Timber Owners

(1) As provided in ORS 527.700(1), any operator, timber owner or landowner affected by a finding or order of the State Forester issued under ORS 527.610 to 527.770 may request a hearing within 30 days of the issuance of the order. The request for a hearing shall be in writing and must include a specific statement as to the reasons for disputing the State Forester's order, including but not limited to disagreement with any findings leading to the order. In addition, the request for hearing shall state what relief from the order is sought.

(2) Hearings under this rule shall be conducted as contested case proceedings under ORS 183.413 to 183.470.

(3) The hearing shall be commenced within 14 days after receipt of the request for hearing and a final order shall be issued within 28 days of the request for hearing unless all parties agree to an extension of the time limits.

(4) An administrative law judge from the Office of Administrative Hearings shall conduct hearings under ORS 527.700. The administrative law judge shall conduct the hearing and prepare the record for filing with the board within five working days of the close of the hearing. Except as provided in section (5) of this rule, no less than a majority of the board shall then review and consider the record, hold a meeting or telephone conference, and issue a final order.

(5) If upon a determination by the chairperson of the Board of Forestry, the board cannot complete a final order in the matter within 28 days of the request for a hearing, the chairperson may delegate the authority to issue a final order to the administrative law judge as provided in ORS 527.700(2).

(6) Failure of the person requesting the hearing to appear at the hearing shall be deemed a default and shall result in a final order being entered upon a prima facie case made on the record of the agency.

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.700

Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0110; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-672-0210

Hearings for Persons Adversely Affected by an Operation for Which a Written Plan is Required under ORS 527.670(3)

(1) If a written plan under ORS 527.670(3) is required for an operation, any person who submitted written comments on the operation and who is adversely affected or aggrieved by the operation may file a request to the board for a hearing on the plan. The request shall be filed and copies served on the operator, timber owner and landowner personally or by certified mail within 14 days of the date the comment period for the State Forester ended, whether or not comments were issued. The request shall include:

(a) A copy of the written plan on which the hearing is requested.

(b) A copy of the comments on the written plan submitted by the person requesting the hearing.

(c) The person's name and address and the organization represented;

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(d) If represented by an attorney, the name and address of the attorney representing the person;

(e) A detailed statement of the person's interest and of how such interest may be affected by the results of the proceeding;

(f) A detailed statement of the fact regarding how the person's interest is affected by the Forest Practices Act or rules adopted thereunder;

(g) A detailed statement of fact showing that the operation is the type described in ORS 527.670(3);

(h) A brief statement of what board action is sought by the person.

(2) Upon receipt of a request provided under section (1) of this rule, the State Forester shall determine whether the request meets the requirements of ORS 527.700(3) through (5). In making this determination, the State Forester shall consider:

(a) Whether the person has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;

(b) Whether any such affected interest is within the scope of the board's jurisdiction;

(c) The interest the petitioner represents and the qualifications the petitioner possesses in cases in which a public interest is alleged;

(d) Whether the person could reasonably be considered to be affected by the Forest Practices Act or rules adopted thereunder.

(3) If the State Forester determines that the person making the request meets the requirements of ORS 527.700(3) through (5), the State Forester shall send written notification of the date of the hearing to the person requesting the hearing and to the timber owner, landowner and operator.

(a) The hearing date shall be no later than 21 days from the receipt of the request for hearing.

(b) The notice of hearing shall contain the statements that:

(A) Failure of the person requesting a hearing to appear at the hearing shall be deemed a default and a record of the proceedings to date, including the agency file or files on the subject of the written plan, automatically becomes a part of the record for the purpose of providing a prima facie case upon which default may be granted; and

(B) The hearing shall be conducted by an administrative law judge, according to the Office of Administrative Hearings Rules in OAR 137-003-0501 to 137-003-0700 and the State Forester's Procedural rules in OAR 629-001-0000 to 629-001-0055.

(4) If the State Forester determines that the person making the request does not meet the requirements of ORS 527.700(3) through (5) the State Forester shall recommend to the chairperson of the Board of Forestry that a hearing be denied for cause. The chairperson, upon review of the request for hearing and the State Forester's recommendation, shall either:

(a) Issue a final order on behalf of the board, denying a hearing for cause; or

(b) Direct the State Forester to schedule a hearing and send notices as required in section (3) of this rule.

(5) Failure of the person requesting the hearing to appear at the hearing shall be deemed a default. Based upon a prima facie record the State Forester's comments and recommendations, if any, must stand.

(6) The landowner, timber owner or operator shall be made a party to the proceeding.

(7) The person requesting the hearing under these provisions may only present evidence on those issues raised in the person's written comments to the written plan filed under ORS 527.670(9) relating to conformity with the rules of the board.

(8) The administrative law judge shall conduct the hearing and prepare the record for filing with the board within five working days of the close of the hearing. Except as provided in section (10) of this rule, no less than a majority of the board shall then review and consider, hold a meeting or telephone conference, and issue their comments.

(9) Unless consent to an extension is granted by all parties, the board shall issue its own comments no later than 45 days after the request for hearing was filed. The board may affirm, modify or rescind the comments of the State Forester, if any. The comments of the board or the State Forester concerning a written plan cannot be appealed under ORS 183.482.

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.700

Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0120; DOF 3-2004, f. & cert. ef. 2-10-04; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-672-0220

Hearings Generally; Final Orders

(1) An administrative law judge from the Office of Administrative Hearings shall conduct hearings under ORS 527.700. The administrative law judge shall conduct the hearing and prepare the record for filing with the board within five working days of the close of the hearing. Except as

provided in section (2) of this rule, no less than a majority of the board shall then review and consider the record, hold a meeting or telephone conference, and issue a final order.

(2) If upon a determination by the chairperson of the Board of Forestry, the board cannot complete a final order in the matter within 28 days of the request for a hearing, the chairperson may delegate the authority to issue a final order to the administrative law judge as provided in ORS 527.700(2).

(3) Unless consent to an extension is granted by all parties, a final order shall be issued no later than 28 days after the request for hearing was filed. The order may affirm, rescind or modify the written plan. Appeals from the final order shall be filed as provided in ORS 183.482.

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.700

Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0130; DOF 3-2004, f. & cert. ef. 2-10-04; Suspended by DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-672-0310

Actual Damages Resulting from a Stay; Attorney's Fees

(1) If the board determines in its comments that the written plan of an operation for which a stay was granted is likely to result in compliance with ORS 527.610 to 527.770 or the rules of the board, the board shall award actual damages in favor of each prevailing party against the person requesting the stay. A landowner, timber owner, or operator against whom a stay was entered may petition for actual damages for the portion of the case upon which it prevailed.

(2) The board may award reasonable attorney's fees and expenses to each of the prevailing parties against any other party who the board finds presented a position without probable cause to believe the position was well founded, or made a request primarily for a purpose other than to secure appropriate action by the board. If a written plan pertaining to an operation for which a stay was granted is determined to likely result in compliance with the Forest Practices Act and rules, the board shall award reasonable attorney's fees in favor of each of the prevailing parties against the person requesting the stay. If the board rescinds or modifies the comments on the written plan as submitted by the State Forester pertaining to any operation, the board shall award reasonable attorney's fees and costs against the state in favor of each of the prevailing parties. Any prevailing party, as described above, may file a petition for attorney's fees, expenses and costs for the portion of the case upon which it prevailed.

(3) An award of attorney's fees shall not exceed \$5,000.

(4) As used in this rule, a "prevailing party" is one in whose favor an order pertaining to a written plan is issued, and may include the Department of Forestry where a written plan is affirmed. Where the board rescinds or modifies the comments on portions of a written plan and determines that other portions will likely result in compliance with the FPA or rules, each party may be regarded as a prevailing party.

(5) "Actual damages" include but are not limited to costs such as:

(a) Penalties for non-performance of contracts;

(b) Losses due to market fluctuations;

(c) Payments for crew stand-by;

(d) Equipment down-time;

(e) Move-in and move-out costs; and

(f) Loss in value of logs left sitting on the site for long periods.

(6) Attorney's fees, expenses and costs shall include only the following:

(a) The actual amount of fees charged by the attorney for services directly connected with prosecuting or defending against the challenge to the written plan; or

(b) Where the prevailing party is not charged a specific fee for the case (e.g., because the attorney is paid on a retainer basis or is an employee of the party), the fee shall be the reasonable value of the attorney's services directly connected with prosecuting or defending against the challenge to the written plan. "Reasonable value" means the equivalent of the fees charged by practitioners of similar skill and experience under section (6)(a) of this section, and includes such secretarial and other overhead costs as are customarily included in those fees.

(7) A prevailing party must file a petition and supportive affidavit for award of actual damages from a stay or attorney fees within 30 days of the date of the issuance of the board's comments in the case for which awards are requested. A copy of the petition, together with a supporting affidavit, shall be served upon the opposing party or parties at the time the petition is filed and proof of service shall be provided to the board. The board shall dismiss petitions which do not comply with this rule. The petition shall include:

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Department of Geology and Mineral Industries Chapter 632

(a) A statement of the facts upon which petitioner relies in claiming that it is a prevailing party;

(b) A statement of the amount of award requested, supported by an affidavit that describes in detail the actual damages incurred and the basis for the amount of damages requested; or amount of the fees incurred by petitioner, or where the petitioner was not charged fees, the basis for the amount of the costs requested; and

(c) A statement describing how the amount of the award requested would be consistent with the policies and the purposes of the Oregon Forest Practices Act.

(8) An opposing party shall have 14 days from the date of service of the petition to file written objections. Such objections shall be served on the petitioner at the time the objections are filed and proof of service shall be provided to the board.

(9) In designating the amount of fees and costs to be awarded, the board shall consider, but is not limited to, the following factors:

(a) Consistency with the policies and purposes of the Oregon Forest Practices Act including but not limited to the following considerations:

(A) The issue in the case was one of first impression; or

(B) A complaint or defense was frivolous or otherwise without merit;

or

(C) A party was an individual who, due to the circumstances of the case, had to rely upon his or her personal financial resources.

(b) In the case of attorney's fees, the appropriate charges for the services rendered, based on:

(A) The time and labor customarily required in the same or similar cases;

(B) Hourly charges customarily made by attorneys for rendering similar services;

(C) The novelty and difficulty of the issues and the amount of preparation, research or briefing reasonably required; and

(D) The skill requisite to perform the services properly.

(c) Awards in similar cases.

(10) The administrative law judge who presided over the hearing on the written plan shall examine the petition for award of actual damages or attorney's fees and any associated arguments. The administrative law judge may require the parties to provide additional information or conduct hearings as the judge deems necessary. The administrative law judge shall prepare a proposed order for the board.

(11) The board shall review the administrative law judge's proposed order and issue a final order awarding actual damages or attorney's fees pursuant to this section, based upon the record. The board may award all or a portion of the actual damages or fees requested. The board will not act on a petition until the appeal period has run or, where an appeal has been filed, during the pendency of the appeal.

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.700

Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0150; DOF 3-2004, f. & cert. ef. 2-10-04; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

629-674-0100

Procedures for Requesting Copies of Notifications and Written Plans; Fees

(1) Any person may examine or request copies of notifications or written plans filed with the State Forester as required by the Forest Practices Act. Examination of records, or requests for copies shall be made at the department district or unit office responsible for the geographic areas in question.

(2) When a person requests copies of notifications or written plans already on file, a fee shall be charged, as specified in OAR 629-010-0200, Charges for Copying and Purchasing Public Records.

(3) When a person requests to be sent notifications or written plans as they are filed at some time in the future, the request shall be made in writing on forms provided by the State Forester. The request shall require payment, in advance, of a fee established in department directive 0-5-1-301, dated October 2003. The request shall specify the geographic area of interest by legal description. The smallest unit of area described in a request shall be a section (usually 640 acres).

(4) Upon payment of fees described in section (3) of this rule, the person shall be sent all notifications and written plans filed with the State Forester for the geographic area described in the request for a period of one year from the date of payment.

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.670

Hist.: FB 2-1988, f. & cert. ef. 5-11-88; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0200; DOF 8-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06

Adm. Order No.: DGMI 1-2005(Temp)

Filed with Sec. of State: 8-3-2005

Certified to be Effective: 8-3-05 thru 1-30-06

Notice Publication Date:

Rules Amended: 632-030-0022

Subject: The rule restructures the fee formula. Fees are lowered for those permittees with small amounts of production and increased for larger producers.

Rules Coordinator: Gary W. Lynch—(541) 967-2039, ext. 23

632-030-0022

Fees

(1) Application Fee: The fee for a new application for an operating permit is \$1,200. If a permit is not issued within one year, due to the applicant's failure to provide all requested information in a timely manner or the need for extraordinary department review, the applicant must pay the annual fee specified in subsection (2)(a) or resubmit the application and pay a new application fee.

(2) Annual Fee:

(a) Effective July 27, 2005, the annual fee for an operating permit is a base fee of \$635 plus \$.0075 per ton of aggregate or mineral ore extracted during the previous 12-month period.

(b) Operations that have been regraded, stabilized, and acceptably seeded prior to the beginning of the annual permit period but where reclamation is not complete because the vegetation is not satisfactorily established may pay a fee of \$200 in place of the annual fee specified in subsections (2)(a) or (b) above.

(c) The department in its discretion may prorate annual fees at the permittee's request to adjust the anniversary date.

(d) Each application for an Operating Permit or Limited Exemption Certificate shall be accompanied by the established fee.

(e) Each permit and certificate shall be renewed annually, on or before the last day of the month shown on the permit as the renewal month. The annual fee shall be paid and the annual report form returned prior to renewal. As a courtesy, the Department may notify the permittee with a renewal notice at least 45 days prior to the renewal date. The permittee must pay all delinquent fees owed to this Department prior to renewal of the certificate or permit;

(3) Amendment Fee: The Department may assess an additional fee not to exceed \$625 for staff time, legal fees, and other administrative costs relating to a request for significant revisions to an operating permit or reclamation plan.

(4) Refunds: The State Geologist may refund a fee if the underlying application or request is withdrawn and neither significant staff time has been spent nor expenses have been incurred by the Department.

(5) Local Land Use Decisions: If, at the request of an applicant, the department responds to requests for information required by a local government in making a land use planning decision on behalf of the applicant for a specific site, the State Geologist may require the applicant to pay the department an additional fee for staff time and related costs. The department shall notify the applicant in advance of the estimated costs and the amount of hours necessary to provide the information. The actual amount assessed shall not exceed the estimate provided by the department.

(6) Extraordinary Expenses: If an application for a new permit requires extraordinary department resources because of concerns about slope stability or proximity to waters of the state or other environmentally sensitive areas, the applicant shall pay to the department an additional fee in an amount determined by the State Geologist to be adequate to cover the additional costs for staff and other related expenses. The State Geologist shall consult with the applicant when determining the amount of the fee.

(7) Special Inspection Fees: An additional fee not to exceed \$200 may be assessed for department investigations under the following situations:

(a) Where surface mining is conducted without a valid Operating Permit required under ORS 517.790;

(b) Where a surface mining operation has not been reclaimed in a timely manner;

(c) Where surface mining operations are conducted outside the area authorized in the Operating Permit.

(8) The fees assessed in subsections (3), (5), (6), and (7) shall be in addition to any fee assessed under subsections (1) and (2) of this rule.

(9) The completed annual report and renewal fee required under ORS 517.775 and OAR 632-032-0022(2)(f) for any area operating under a

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Limited Exemption Certificate must be received by the Department within 30 days of the anniversary date of the Certificate. Failure to file the report or pay the fee within this 30-day period will result in the immediate termination of the limited exemption under ORS 517.770(2) and the revocation of the Certificate. If the limited exemption is terminated; all mining allowed under the exemption must cease immediately and the landowner or operator must:

(a) Immediately begin implementation of the closure plan required under OAR 632-0300-0017(8);

(b) Or if no closure plan has been submitted to the Department, submit a closure plan to the Department within 30 days and begin implementing the closure plan within 30 days after approval by the Department; or

(c) Within 30 days, submit an application to the Department for a new Operating Permit (for sites previously operating only under a Limited Exemption Certificate) or an amendment to the existing Operating Permit (for sites operating under both a Certificate and Operating Permit).

Stat. Auth.: ORS 517

Stats. Implemented: ORS 517.800

Hist.: GMI 2-1997, f. & cert. ef. 10-14-97; DGMI 1-1999, f. & cert. ef. 1-7-99; DGMI 1-2000, f. & cert. ef. 7-20-00; DGMI 2-2003, f. & cert. ef. 8-22-03; DGMI 3-2003, f. 8-29-03, cert. ef. 9-1-03; DGMI 1-2005(Temp), f. & cert. ef. 8-3-05 thru 1-30-06

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Department of Human Services, Child Welfare Programs Chapter 413

Adm. Order No.: CWP 8-2005

Filed with Sec. of State: 7-28-2005

Certified to be Effective: 7-28-05

Notice Publication Date: 5-1-05

Rules Adopted: 413-015-1100, 413-015-1105, 413-015-1110, 413-015-1115, 413-015-1120, 413-015-1125

Rules Amended: 413-120-0440

Subject: These Child Protective Services and Adoption rules are being adopted and amended to allow for local Child Welfare offices to run and use criminal records checks for CPS related decisions and emergency certification purposes. These rules have also been changed to reflect new Department terminology and to correct formatting and punctuation.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-1100

Authority and Responsibility

(1) ORS 418.005 provides that, in order to establish, extend, and strengthen welfare services for the protection and care of dependent or neglected children, the Department of Human Services may make all necessary rules and regulations for administering child welfare services. Among other duties outlined by ORS 409.010, the Department is responsible for the delivery and administration of programs and services relating to children and families, including child protective services and foster care. ORS 419B.020 provides that, upon receipt of a report of child abuse, the Department or a law enforcement agency is required to immediately cause an investigation to be made to determine the nature and cause of the abuse. In addition, ORS 418.640 requires the Department to adopt rules it deems necessary or advisable to protect the best interests of children in foster homes. Finally, ORS 181.537 authorizes the Department to conduct criminal records checks on subject individuals, as defined by the Department, if deemed necessary by the Department.

(2) The Department of Human Services Child Welfare Program has determined that, in order to protect children from abuse or neglect and to protect the best interests of children in foster homes, it is necessary for the Department to permit local Child Welfare offices to perform criminal records checks on subject individuals when the Department is conducting a child protective services assessment, has an open child welfare case, or determines that emergency foster home certification decisions must be made.

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

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

Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05

413-015-1105

Purpose

(1) The primary purposes of LEADS access in local Child Welfare offices are to assist staff in making child protective services related decisions and for emergency certification purposes as outlined in these rules (OAR

413-015-1100 to 413-015-1125). Criminal history information obtained from LEADS will be considered, along with other risk influences, to:

(a) Assess child safety; or

(b) Determine if behavior that is revealed by criminal history is inconsistent with providing care to children or having access to children.

(2) These rules do not address criminal records checks for non-emergency certification or adoption approval. Criminal records checks for non-emergency certification or adoption approval are governed by OAR 413-120-0400 to 413-120-0470.

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

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

Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05

413-015-1110

Definitions

The following definitions apply to OAR 413-015-1100 to 413-015-1125:

(1) "Law Enforcement Data System (LEADS)" means the computerized criminal history information system maintained by the Oregon State Police.

(2) "LEADS representative" means the staff person in the local DHS office who has been designated under OAR 257-015-0050(5) by the DHS Assistant Director for Children, Adults and Families and who has completed the training required by Oregon State Police in order to train other employees to be LEADS users.

(3) "LEADS user" means a staff person in the local DHS office who has been trained by a LEADS representative and has been certified by the Oregon State Police to access LEADS information.

(4) "Notice" means a subject individual has been informed in writing that the Department may conduct criminal records checks and that the subject individual has a right to obtain a copy of his or her LEADS record and has a right to challenge information in the record by contacting Oregon State Police. Notice does not imply consent or permission.

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

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

Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05

413-015-1115

Requirements

(1) LEADS representatives must train and certify designated LEADS users as outlined in OAR 257-015-0050.

(2) The Department will complete background checks on all LEADS representatives and LEADS users as provided in OAR 257-015-0050(6).

(3) The Department will implement information security measures as provided in OAR 257-015-0000 to 257-015-0100.

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

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

Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05

413-015-1120

LEADS Use for Child Protective Service Purposes

(1) The local Child Welfare office may perform criminal records checks on subject individuals using the LEADS system available in the local office and use LEADS information pertaining to subject individuals for Child Protective Services purposes when:

(a) Notice as defined at OAR 413-015-1110(4) has been provided to a subject individual before the Department performs criminal records checks on the subject individual; and

(b) A child abuse allegation is being assessed or there is an open Child Welfare case.

(2) When conducting criminal records checks for a Child Protective Services purpose under this rule, a subject individual is defined as:

(a) A person who is alleged to be the perpetrator of child abuse or neglect when the allegation is being assessed by Child Protective Services;

(b) A person who resides in or frequents a household where the alleged victim of child abuse resides on a full- or part-time basis; or

(c) A person in the household to which a child is being returned.

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

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

Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05

413-015-1125

LEADS Use for Certification Purposes in Emergency Situations

(1) The local Child Welfare office may perform criminal records checks using the LEADS system available in the local office and use LEADS

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information pertaining to a subject individual for emergency certification purposes when:

(a) The subject individual has consented to the Department conducting a criminal records check by signing form DHS 1011F, "Consent For Criminal Records & Fingerprint Check";

(b) There is an emergent need to place a child or maintain a placement of a child, and the Criminal Records Unit is unable to complete the check in time;

(c) Staff refer to and comply with OAR 413-120-0400 to 413-120-0470; and

(d) A child abuse allegation is being assessed or there is an open child welfare case.

(2) When conducting criminal records checks for emergency certification purposes under this rule, a subject individual is defined as:

(a) An adult who resides in or plans to reside in a household that is being certified for placement of a child;

(b) An adult who resides in or plans to reside in a household that is being re-certified to place or maintain a child in the household;

(c) A person assisting in the household to enrich the care provided to children placed in the household by tutoring or providing recreation, relief care, or other services such as household chores, whether paid or unpaid; or

(d) A member of the household under 18 years of age if there is reason to believe that member may pose a risk to children placed in the household.

(3) Staff in local Child Welfare offices who access LEDS information for emergency certification purposes as outlined in these rules must:

(a) Refer to and comply with OAR 413-120-0400 to 413-120-0470; and

(b) Forward fingerprints and consent forms to the Department's Criminal Records Unit for processing if:

(A) LEDS information reveals an arrest or conviction of any kind;

(B) The subject individual discloses an arrest or conviction of any kind; or

(C) It is known that the subject individual has lived outside of Oregon within the last five years.

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

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

Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05

413-120-0440

Limitations of Inquiries

(1) Only DHS employees who have been fingerprinted and cleared by the Oregon State Police shall access or have access to criminal offender information pursuant to a valid agency agreement. All criminal offender information shall be handled in compliance with the agency agreement and rules and procedures of the Oregon State Police relating to the criminal offender information (OAR 257-010-0010 to 257-010-0050). It is the responsibility of DHS to assure strict compliance with federal and state laws, rules and procedures regarding criminal offender information access and dissemination.

(2) Criminal offender information obtained from OSP or the FBI may not be given to unauthorized persons or agencies or used for any purpose other than that for which the information was obtained.

(3) Criminal offender information, including fingerprint-based criminal offender information, shall be obtained by DHS under Chapter 413 of the Oregon Administrative Rules to ascertain whether a *subject individual* as defined at OAR 413-120-0430 has been convicted of a crime that is substantially related to their qualifications as a relative caregiver, foster parent, or adoptive parent, or their suitability to be an other person in the household.

(4) For purposes of emergency foster care certification, child welfare staff in a local DHS office may obtain criminal history information from the OSP Law Enforcement Data System (LEDS) accordance with OAR 413-015-1100 to 413-015-1125. In addition to any criminal history checks completed in the local DHS office for purposes of emergency foster care certification, whenever a fingerprint-based criminal history check is required, a completed and signed form 1011F and two properly completed FBI fingerprint cards (FD 258) must be provided to the DHS Criminal Records Unit (CRU) for processing.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010 - 181.560 & 418.016

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05

Adm. Order No.: CWP 9-2005

Filed with Sec. of State: 8-1-2005

Certified to be Effective: 8-1-05

Notice Publication Date: 7-1-05

Rules Amended: 413-055-0105

Subject: OAR 413-055-0105 is being amended to correct a typographical error that occurred at the April 1, 2005 permanent rule filing.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-055-0105

Definitions

As used in OAR 413-055-0100 to 413-055-0165:

(1) "Crisis Center" means a location in which there are paid personnel or crisis volunteers who are trained to provide crisis services, including but not limited to intervention, peer support, information and referral, advocacy, outreach, and community education to survivors of sexual assault and their families.

(2) A "grantee" is a proposer that has been awarded a grant by the Department from the Sexual Assault Victims Fund to support the delivery of services to victims of sexual assault and their families.

(3) A "proposer" is a private, non-profit agency that meets the minimum criteria contained in OAR 413-055-0120 and makes an application to the Department for a grant from the Sexual Assault Victims Fund to support the operation of qualified programs as described in OAR 413-055-0110.

(4) "Sexual Assault" means any touch or act for which informed consent is not given that is sexual in content or used for sexual gratification or stimulation of the perpetrator by either threat of force, force, intimidation, trickery, coercion, or bribery where an imbalance exists because of size, strength, authority, age, development, or knowledge. It includes rape, oral and anal sodomy, exhibitionism, voyeurism, obscene phone calls, sexual pictures, and prostitution.

(5) "Sexual Assault Victims Fund" means the fund created by ORS 409.285.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.270 - 409.285

Hist.: SOSCF 24-2000, f. & cert. ef. 9-7-00; CWP 19-2004, f. 12-30-04, cert. ef. 1-1-05; CWP 9-2005, f. & cert. ef. 8-1-05

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

Adm. Order No.: OMAP 35-2005

Filed with Sec. of State: 7-21-2005

Certified to be Effective: 7-22-05

Notice Publication Date: 7-1-05

Rules Amended: 410-120-1295

Subject: The General Rules Program administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. OMAP permanently amended OAR 410-120-1295 to add clarification of requirements for hospitals and Fully Capitated Health Plans (FCHPs) as well as add the name of a new hospital to the reimbursement documents, FCHP Non-Contracted DRG Hospital Reimbursement Rates.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-1295

Non-Participating Provider

(1) For purposes of this rule, a Provider enrolled with the Office of Medical Assistance Programs (OMAP) that does not have a contract with an OMAP-contracted managed care plan is referred to as a Non-Participating Provider.

(2) For covered services that are subject to reimbursement from the managed care plan, a Non-Participating Provider, other than a hospital governed by (3)(b) below, must accept from the OMAP-contracted managed care plan, as payment in full, the amount that the provider would be paid from OMAP if the client was fee-for-service.

(3) The OMAP-contracted Fully Capitated Health Plan (FCHP) that does not have a contract with a Hospital, is required to reimburse, and Hospitals are required to accept as payment in full the following reimbursement:

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(a) The FCHP will reimburse a non-participating Type A and Type B Hospital fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the FCHP for the contract period (ORS 414.727).

(b) All other non-participating hospitals, not designated as a rural access or Type A and Type B Hospital, for dates of service on or after October 1, 2003 reimbursement will be based upon the following:

(A) Inpatient service rates are based upon the capitation rates developed for the budget period, at the level of the statewide average unit cost, multiplied by the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(B) Outpatient service rates are based upon the capitation rates developed for the budget period, at the level of charges, multiplied by the statewide average cost to charge ratio, the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(4) The geographic factor, and the statewide average unit costs for inpatient service rates for subsection (3)(b)(A) and for outpatient service rates for subsection (3)(b)(B), are calculated by the Department's contract-actuarial firm.

(a) The FCHP Non-Contracted DRG Hospital Reimbursement Rates document, dated October 1, 2003, is effective for dates of service October 1, 2003 through September 30, 2004.

(b) The FCHP Non-Contracted DRG Hospital Reimbursement Rates document, dated October 1, 2004, is effective for dates of service October 1, 2004 through September 30, 2005. These documents are posted on the Department's Website at www.dhs.state.or.us/policy/healthplan/guides/hospital/main.html.

(5) A non-participating hospital must notify the FCHP within 2 business days of an FCHP patient admission when the FCHP is the primary payer. Failure to notify does not, in and of itself, result in denial for payment. The FCHP is required to review the hospital claim for medical appropriateness, compliance with emergency admission or prior authorization policies, member's benefit package, the FCHP contract and Oregon Administrative Rules.

(6) After notification from the non-participating hospital, the FCHP may:

- (a) Arrange for a transfer to a contracted facility, if the patient is medically stable and the FCHP has secured another facility to accept the patient;
- (b) Perform concurrent review; and/or
- (c) Perform case management activities.

(7) In the event of a disagreement between the FCHP and Hospital, the provider may appeal the decision as an administrative review as specified in OAR 410-120-1580.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.743
Hist.: OMAP 10-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 22-2004, f. & cert. ef. 3-22-04; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 75-2004(Temp), f. 9-30-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 4-2005(Temp), f. & cert. ef. 2-9-05 thru 7-1-05; OMAP 33-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 35-2005, f. 7-21-05, cert. ef. 7-22-05

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Adm. Order No.: OMAP 36-2005

Filed with Sec. of State: 8-1-2005

Certified to be Effective: 8-1-05

Notice Publication Date: 7-1-05

Rules Amended: 410-123-1040, 410-123-1240

Subject: The Dental Program administrative rules govern the Office of Medical Assistance Programs' payment for services rendered to clients. OMAP permanently amended OAR 410-123-1040 to remove incorrect language regarding billing and duplicative language. OMAP permanently amended OAR 410-123-1240 to reflect changes in OMAP's billing requirements for paper claims. Dental paper claim formats currently process using the Tartan System which has been set for decommission end of July 2005. DHS plans to process dental claims on an Optical Claims Reader (OCR) system. Currently OMAP is processing six different versions of dental claim forms (1994, 1996, 1998, 2000, 2002 and 2004). The OCR system will be programmed to process only the dental claim forms identified in 410-123-1240, effective August 1, 2005.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-123-1040

Foreword

(1) The Office of Medical Assistance Programs' (OMAP) Dental Services administrative rules establish specific requirements for dental services provided to OMAP clients and:

(a) Are designed to assist dentists, dental hygienists and denturists to deliver dental care services for clients with Medical Assistance Program coverage;

(b) Contain information on policy, services requiring prior authorization, service limitations and service criteria.

(2) All OMAP rules are intended to be used in conjunction with the OMAP General Rules (chapter 410, division 120), the Oregon Health Plan (OHP) Administrative Rules (chapter 410, division 141), Pharmaceutical Services Rules (chapter 410, division 121) and other relevant OMAP OARs applicable to the service provided, where the service is delivered, and the qualifications of the person providing the service including the requirement for a signed provider enrollment agreement. Providers must follow OMAP rules in effect on the date of service.

(3) Dental services are limited as directed by General Rules — Excluded Services and Limitations (OAR 410-120-1200), the Dental Services administrative rules (chapter 410, division 123), and the Health Services Commission's (HSC) Prioritized List of Health Services (List) (found in the OHP Administrative Rules — chapter 410, division 141).

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 36-2005, f. & cert. ef. 8-1-05

410-123-1240

Dental Claims

(1) The Office of Medical Assistance Programs (OMAP) will only accept claims for professional dental services, in the following formats:

(a) Electronic claims — the "837" dental electronic claim format is used for all professional dental services provided in any setting:

(A) Submission of an electronic claim directly or through an Agent must comply with the DHS Electronic Data Interchange (EDI) rules, OAR 410-001-0100 et seq;

(B) The "835" professional electronic claim format is used when billing for any service identified in OAR 410-123-1260 or in Table 123-1260-2. [Table not included. See ED. NOTE.]

(b) Paper claims:

(A) ADA paper claims (only the 2000, 2002 and 2004 versions) — this format is used for all professional dental services provided in any setting;

(B) Effective August 1, 2005, claims received by OMAP that are not in the correct format will be returned to the provider unprocessed;

(C) The provider will be responsible for making corrections and submitting a valid claim in accordance with these rules;

(D) CMS-1500 paper claim format must be used when billing for any service identified in OAR 410-123-1260 or in Table 123-1260-2. [Table not included. See ED. NOTE.]

(2) Specific information regarding HIPAA requirements can be found on OMAP's website.

(3) Refer to the Dental Supplemental Materials for information regarding OMAP forms.

(4) Do not include OMAP copayments when billing for dental services.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 76-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 36-2005, f. & cert. ef. 8-1-05

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Adm. Order No.: OMAP 37-2005(Temp)

Filed with Sec. of State: 8-15-2005

Certified to be Effective: 8-15-05 thru 1-15-06

Notice Publication Date:

Rules Amended: 410-125-0141

Subject: The Hospital Services program administrative rules govern the Office of Medical Assistance Programs' payments for hospital services to certain clients. OMAP temporarily amended 410-125-0141 to reflect an increase in the Unit Value component of the

ADMINISTRATIVE RULES

formula that reimburses hospitals for inpatient services paid on a Diagnosis Related Group (DRG) basis. This increase is needed to bring the reimbursement for DRG hospitals more in line with Medicare rates.

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 $N = \frac{Z}{R} \cdot S$ where $Z = 1.15$ (a 75% confidence level), S is the standard deviation, and $R = 10\%$ of the mean. OMAP determines the minimum number of claims required to set a stable weight for each DRG (N must be at least 5). For state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRGs lacking sufficient volume, OMAP sets a relative weight using:

(A) OMAP non-Title XIX claims data; or

(B) Data from other sources expected to reflect a population similar to the OMAP Title XIX caseload.

(c) When a test shows at the 90% confidence level that an externally derived weight is not representative of the average cost of services provided to the OMAP Title XIX population in that DRG, the weight derived from OMAP Title XIX claims history is used instead of the externally derived weight for that DRG.

(d) Those relative weights based on Federal Medicare DRG weights, will be established when changes are made to the DRG Grouper logic. State specific relative weights shall be adjusted, as needed, as determined by OMAP. When relative weights are recalculated, the overall Case Mix Index (CMI) will be kept constant. Reweighting of DRGs or the addition or modification of the grouper logic will not result in a reduction of overall payments or total relative weights.

(4) Case Mix Indexed: The hospital-specific case mix index is the total of all relative weights for all services provided by a hospital during a period, divided by the number of discharges.

(5) 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:

(a) 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 unit per discharge.

(b) August 15, 2005, the operating unit payment is 100% of 2004 Medicare and related data published in Federal Register/Vol. 68, No. 148, August 1, 2003. The unit value is also referred to as the operating unit 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

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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: 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; OMAP 37-2005(Temp) f. & cert. ef. 8-15-05 thru 1-15-06

Department of Human Services, Public Health Chapter 333

Adm. Order No.: PH 12-2005(Temp)

Filed with Sec. of State: 7-21-2005

Certified to be Effective: 7-21-05 thru 1-13-06

Notice Publication Date:

Rules Amended: 333-039-0015

Subject: Effective immediately, the Department of Human Services, Health Services is amending 333-039-0015 relating to the on-site water supply at mass gatherings. The amendment is necessary to allow flexibility in the amount of water required to be on the event site, in situations where reserve water is evaluated to be easily available and in good supply or not easily available and not in good supply. The amendment does not affect the availability of water to participants, but could reduce or increase the amount of water on site at any one time. As written, the current rule allows little flexibility to work with alternatives.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-039-0015

Water Supply

Required Amounts:

(1) A minimum of 12 gallons per person per day shall be available for the anticipated assembly;

(2) Storage facilities equal to one day's total water usage shall be provided, unless a greater or lesser amount is determined by the Department as sufficient or necessary, based on the availability and quantity of the reserve water supply and the required water demands for toilets, food vendors, camping areas and other facilities.

(3) An amount of water equal to one day's total usage shall be kept in reserve at all times.

Stat. Auth.: ORS 433

Stats. Implemented: ORS 433

Hist.: HD 2, f. 9-15-71, ef. 10-1-71; PH 12-2005(Temp), f. & cert. ef. 7-21-05 thru 1-13-06

Adm. Order No.: PH 13-2005

Filed with Sec. of State: 8-10-2005

Certified to be Effective: 8-15-05

Notice Publication Date: 7-1-05

Rules Amended: 333-700-0130

Subject: Outpatient renal dialysis facility construction requirements were written to protect the public with infection control and fire and life safety regulations. State Building Code changes in October 2004 revised references in the existing dialysis rules. The amendment of Oregon Administrative Rule, 333-700-0130, will correct the rule language to reflect the revised State Building Code language.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-700-0130

Dialysis Facilities Construction Requirements

These rules apply to outpatient renal dialysis facilities licensed by the State of Oregon.

(1) All new construction and alterations must comply with Oregon Structural Specialty Code at the time of original licensure.

(2) Minimum facility standards are as follows:

(a) Facility Location & Accessibility:

(A) The facility shall be located to allow for prompt access by ambulances and by buses, including wheelchair-lift equipped type, without the need for patients to traverse across vehicular pathways and parking areas, or the project sponsor shall present an alternate plan showing that patient safety will not be compromised;

(B) The dialysis unit shall be located in a separate building or section of a building free of traffic by non-related persons;

(C) Accessible parking shall be provided for patients and visitors, constructed to comply with the Oregon Structural Specialty Code, as enforced by the Oregon Building Codes Division and local jurisdictions having authority;

(D) Building access and all patient use areas shall be designed and constructed in accordance with Chapter 11 of the Oregon Structural Specialty Code for accessibility at the time of original licensure as enforced by the Oregon Building Codes Division or local jurisdictions having authority; and

(E) Corridors, doorways, stairways and elevators serving the unit shall be sized to allow at least one exit route for emergency transport of a patient by an Emergency Medical Services (EMS) type of stretcher to an ambulance.

(b) Treatment Areas:

(A) Dialysis stations shall be designed and equipped to provide adequate and safe dialysis therapy, as well as privacy and comfort for patients.

(i) The space shall be sufficient to accommodate the patient recliner and dialysis machine, as well as sufficient space to accommodate medically needed emergency equipment. Individual patient treatment areas shall contain at least 80 sq. ft. A 4'-0" minimum shall be available at the foot of the recliner.

(ii) Hand washing stations, readily available for staff use, shall be provided within the treatment area. One hand washing station shall be provided for each six patients minimum, located with appropriate spacing to facilitate washing of hands between patient contact.

(B) Patient care staff station(s) shall be located within the dialysis treatment area and designed to provide visual observation of all patients.

(C) Patient separation, when required by Center for Disease Control Guidelines (e.g. Hepatitis-B Virus), shall be accomplished either by use of a dedicated room, or by use of a non-permeable portable partition or curtain that prevents a blood splash from one patient to another, and does not inhibit staff observation as stated above.

(3) Patient Support: The following shall be provided:

(a) Waiting space with a seating capacity minimum of 1 seat or wheelchair for each 2 patient stations;

(b) An Americans with Disabilities Act (ADA) accessible patient toilet, convenient to the waiting room, with emergency nurse call annunciator to the patient care staff station;

(c) Dedicated space for patient scale; and

(d) Dedicated space for wheelchair storage.

(4) General Support Areas: The following shall be provided:

(a) Clean supply room with space for bulk storage of necessary supplies;

(b) Soiled holding room or area for soiled linen and contaminated waste. A hand washing station shall be provided. A flush rim clinical sink with rinsing device is also required when peritoneal dialysis is performed;

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(c) If a dedicated medical waste room or area is provided in addition to the soiled holding area, a hand washing station is not required at the contaminated waste area;

(d) Secure medications storage, meeting Board of Pharmacy rules with dedicated refrigerator and a hand washing station;

(e) Emergency cart/equipment storage located close to the patient treatment area, readily accessible by staff, and not located in the exit path;

(f) Access to a janitor closet with floor sink or service sink and space for supplies within or close to the unit;

(g) Equipment maintenance and storage space for equipment servicing and storage. Equipment space allocated for bio-medical interventions shall not be in proximity to patients while they are undergoing dialysis;

(h) When dialyzer reprocessing is practiced, space for reuse equipment, work counter and hand washing station. Additional sinks shall be provided as defined by the facility's reprocessing program;

(i) Solution mixing/preparation area for central concentrate delivery system or individual preparation, sized to meet facility needs;

(j) Dedicated space for central or individual water treatment equipment with waste drain sized to meet equipment requirements;

(k) Separate staff toilet facilities within or near the unit;

(l) If a home training program is included, separate training room(s) with a hand washing station shall be provided. At least one convenient program office and general support spaces shall be provided to meet program needs. An emergency nurse call, annunciated at the patient care staff station, or the home training office, shall be provided in each training room.

(m) Staff office; and

(n) Consultation space available for private conferences with patients and/or family.

(5) Finishes:

(a) Wall materials in all patient treatment areas shall be cleanable;

(b) Water treatment area walls and floors shall be designed and constructed to prevent water from migrating to other areas during normal operating circumstances; and

(c) In new construction or renovation, all soiled utility, medical waste storage, and janitor closet flooring shall be seamless with an integral coved wall base.

(6) Maintenance and Housekeeping:

(a) All building components and equipment shall be maintained in good repair and free from obvious hazards to patients and staff; and

(b) All dialysis equipment shall be maintained in accordance with manufacturers' recommendations, and each dialysis machine shall be cleaned in accordance with written policies and procedures after each use.

(7) Mechanical and Plumbing:

(a) Hot water used for hand washing shall have a water temperature of a minimum of 105° and a maximum of 120° Fahrenheit;

(b) All water treatment and dialysate concentrate equipment and distribution systems shall be in compliance with Association for the Advancement of Medical Instrumentation (AAMI) standards (RD52) at all times. Floor drain(s) shall be provided in these area(s);

(c) If piped-in oxygen or vacuum systems are included, they shall be installed in accord with National Fire Protection Act (NFPA) 99, Chapter 4 and the Oregon Plumbing Specialty Code;

(d) All heating, ventilation and cooling systems shall comply with the Oregon Mechanical Specialty Code and Chapters 12 and 13 of the Oregon Structural Specialty Code (OSSC) at the time of initial licensure as enforced by the Oregon Building Codes Agency or local jurisdiction having authority;

(e) Dialyzer reuse space, if provided, shall not recirculate air, and shall be provided with an exhaust to the outside as required for the reprocessing methods utilized;

(f) To minimize discomfort to patients, whose sensitivity to drafts and temperature change may be accentuated by their physical condition, heating, cooling and ventilation systems in facilities licensed after July 1, 2003, shall be designed to minimize airflow and temperature change at treatment stations; and

(g) In facilities licensed after July 1, 2003, lavatories and sinks intended for hand washing shall be trimmed with fittings operable without use of the hands.

(8) Electrical:

(a) Emergency power for evacuation lighting and the fire alarm system shall be provided. Lighting levels shall be 5 foot candles minimum at patient stations, staff support stations and paths of egress for a minimum of 1 1/2 hours. Installation shall comply with Oregon Structural Safety Code Chapter 10;

(b) In facilities initially licensed or constructed after July 1, 2003, provisions shall be made to allow connection to an alternate power source. The point of connection shall be immediately accessible to the exterior. The alternate power source shall provide on-going power for lighting required in (8)(a) of this sub-section, and continued provision of dialysis services;

(c) A ground fault interrupter (GFI) shall be provided independently for each dialysis machine;

(d) Hospital grade electrical outlets shall be provided serving all dialysis equipment connections; and

(e) All electrical installations shall comply with the Oregon Electrical Specialty Code in effect at the time of initial licensure as enforced by the Oregon Building Codes Agency having jurisdiction and shall be maintained in full compliance.

(9) Structural, Fire & Life Safety and Maintenance:

(a) Occupancy classification: All facilities constructed after May 6, 2005, shall be constructed to a minimum standard of I-2 occupancy classification as defined by the Oregon Structural Specialty Code, 2004 Edition; or, as outlined by the State of Oregon Building Code Division, a "B" occupancy using the Alternate Method Ruling No. 05-02 and having the following conditions.

(A) Dialysis facilities shall not be located more than one level from the exit discharge. Structural requirements shall be in accordance with the Oregon Structural Specialty Code for B occupancies. Note: Facilities requesting certification for federal funding shall also meet the requirements of Chapter 20 of NFPA 101 Life Safety Code, 2000 Edition, as required by the Office of State Fire Marshal.

(B) Dialysis facilities shall be separated from adjoining B occupancies by at least one-hour fire barriers. Separation from all other occupancies shall be of at least two-hour fire barrier separation and as required by Table 302.3.2 of the Oregon Structural Specialty Code.

(C) Buildings that house dialysis facilities shall be provided with an NFPA 13 fire sprinkler system in accordance with Section 903.3.1.1 of the Oregon Structural Specialty Code.

(D) Dialysis facilities greater than 2000 square feet in size shall be separated into two smoke compartments having smoke barriers constructed in accordance with the Oregon Structural Specialty Code.

(E) For the purposes of fire alarm installation, dialysis facilities shall be provided with smoke detection in patient care areas and throughout the exit path. Fire alarm systems shall conform to NFPA 72 standards and shall be in accordance with Section 907.2.6 of the Oregon Structural Specialty Code.

(F) Emergency power supply for dialysis stations and exit illumination shall be provided in accordance with Section 407.8 of the Oregon Structural Specialty Code.

(G) Minimum rated 2A:10B:C fire extinguishers shall be installed in locations readily accessible to the staff in accordance with the Oregon Fire Code and NFPA 10.

(b) Existing B occupancies: Existing dialysis facilities classified as a B occupancy and legally constructed and operating prior to the adoption of these rules shall be permitted to continue to operate as pre-existing non-conforming facilities subject to the following provisions:

(A) Facilities shall have a smoke detection system;

(B) Type 2A:10B:C fire extinguishers shall be installed in locations readily accessible to staff. At least one fire extinguisher shall be provided for each eight (8) patient stations;

(C) The facility shall meet the exiting requirements of Chapter 10 of the Oregon Structural Specialty Code and exiting requirements of Chapter 5 of the NFPA 101 Life Safety Code;

(D) Minimum egress requirements shall include:

(i) Door latching that is classified as simple hardware;

(ii) Exit signs from all common locations of the facility;

(iii) Exit illumination with an alternate power source; and

(iv) The means of egress shall be free of obstructions.

(E) Floor surfaces shall be relatively level and free of tripping hazards;

(F) Buildings shall be maintained in good condition with sound structural integrity; and

(G) Facilities shall be in compliance with local codes, laws and ordinances.

(c) All interior and exterior materials and surfaces (e.g. floors, walls, roofs, ceilings, windows and furnishings) and all equipment necessary for the health, safety and comfort of patients shall be kept clean and in good repair.

Stat. Auth.: ORS 441.020 & 442.015

Stats. Implemented: ORS 441.020 & 442.015

Hist.: PH 7-2003, f. & cert. ef. 6-6-03; PH 13-2005, f. 8-10-05, cert. ef. 8-15-05

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Subject: Amends hospital rules to reflect current industry and technology standards, new department terminology, and correct formatting and punctuation. Corrects miscellaneous references to new building code regulations generated by the International Building Code (IBC) adopted by the State of Oregon in October 2004.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-535-0025

Medical/Surgical Patient Care Unit

Except as permitted under OAR 333-535-0010(1) or 333-515-0060, each patient care unit shall include the following:

(1) Patient Rooms. Each patient room shall meet the following requirements:

(a) For new construction projects, maximum room capacity shall be two patients. For renovation projects, the maximum room capacity shall be the present capacity or four patients, whichever is less.

(b) For new construction, patient rooms shall be constructed to meet the needs of the functional program and shall have a minimum of 100 square feet of clear floor area per bed in multiple bedrooms and 120 square feet of clear floor area in single patient rooms, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules. The dimensions and arrangements of rooms shall be such that there is a minimum of 3' 0" between the sides and foot of the bed and any wall or any other fixed obstruction. In multiple bedrooms, a clearance of 3' 8" shall be available at the foot of each bed to permit the passage of equipment and beds, and 4' 0" shall be provided between beds. Minor encroachments, including columns and hand washing stations, that do not interfere with function may be ignored when calculating required space. For renovation projects, every effort shall be made to meet the requirement set out in this subsection for new construction. However, if full compliance is not practical for a renovation project, the Department of Human Services, Health Services may permit deviations from these requirements as long as patient rooms include at least 80 net square feet of clear floor area per bed in a multiple bed room and 100 net square feet of clear floor area in a single patient room.

(c) Patient Room Windows:

(A) Operable windows are not required in patient rooms. If operable windows are provided, operable sections shall be designed to inhibit possible escape or suicide attempt.

(B) A minimum window area of 16 square feet shall be provided for each patient room. The maximum sill height shall be 36" above the finished floor. A minimum of 8 square feet of window shall be viewable by the patient from the bed. Walls and other non-moveable items shall not block the view of the window.

(C) Windows located in outside walls shall be 20 feet or more from another building or opposite wall and 10 feet or more from the property line except when the window faces on a street or public right of way of greater than 20 feet in width.

(D) For renovation projects where the exterior wall is being retained, windows shall be permitted to vary from the requirements of this subsection if approved by the Department of Human Services, Health Services.

(d) Hand Washing Stations: A hand washing station shall be provided serving each patient room. A hand washing station shall also be located in each patient toilet room. For new construction, the patient room hand washing station shall be located within the room and shall be situated for convenient access by staff and to prevent splash on patients. For renovation projects involving single patient rooms which have a private toilet room, a hand washing station shall be located in either the toilet room or the patient room. Hand washing stations shall comply with the requirements of OAR 333-535-0260.

(e) Patient Toilet Rooms: Each patient shall have access to a toilet room without having to enter the corridor. One toilet room shall serve no more than four beds and no more than two patient rooms. The toilet room shall contain a toilet, hand washing station, and bathing facilities. Patient toilet rooms and central bathing facilities shall comply with the requirements of OAR 333-535-0260.

(f) Each patient shall have a separate wardrobe, locker, or closet suitable for hanging full-length garments and for storing personal effects within the room.

(g) Visual privacy from casual observation by other patients and visitors shall be provided for each patient. The design for privacy shall not restrict patient access to the entrance, hand washing station, toilet, or nurse call system.

(2) Service Areas. Provision for the services listed below shall be in or readily available to each patient care unit. The size and location of each service area will depend upon the numbers and types of beds served. Identifiable spaces are required for each of the indicated functions. Each service area may be arranged and located to serve more than one patient care unit but, unless noted otherwise, at least one such service area shall be provided on each nursing floor. Where the words "room" or "office" are used, a separate, enclosed space for the one named function is intended; otherwise, the described area may be a specific space in another room or common area.

(a) Administrative center(s) or nurses' station(s): This area shall include a desk, storage and work counters and shall have convenient access to a hand washing station to meet infection control standards. It may be combined with or include facilities for reception and communication systems;

(b) Private consultation/administrative office;

(c) Charting facilities: Charting facilities shall have sufficient surface space to provide for charting by staff and physicians to meet the functional needs of the unit;

(d) Toilet room(s) conveniently located for staff use (may be unisex);

(e) Staff facilities: In addition to lounge facilities, securable closets or cabinet compartments shall be provided for the personal articles of nursing personnel. At a minimum, these shall be large enough for purses and bill-folds. Coats may be stored in closets or cabinets on each floor or in a central staff locker area;

(f) Multi-purpose room(s) for staff, patients, patients' families for patient conferences, reports, education, training sessions, and consultation. These rooms shall be accessible to each patient care unit but may be located on other floors if convenient for regular use;

(g) Clean and soiled utility rooms shall be provided in accordance with OAR 333-535-0260(5);

(h) Medication station: Provision shall be made for convenient and prompt 24-hour distribution of medicine to patients. This shall be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another system approved by the Department of Human Services, Health Services. If used, a medicine preparation room or unit shall be under the visual control of the nursing staff. It shall contain a work counter, hand washing station, space and an electrical receptacle for a refrigerator and locked storage for biologicals and drugs. A secured medicine dispensing unit may be located at the nurses' station, in the clean utility room or area, or in an alcove or other space under the direct control of the nursing or pharmacy staff;

(i) Clean linen storage: Each patient care unit shall contain a designated area for clean linen storage. This may be within the clean utility room or area, a separate closet, or a distribution system approved by the Department of Human Services, Health Services on each floor. If a closed cart system is used, storage may be in an alcove;

(j) Nourishment area: There shall be a nourishment area with sink, work counter, refrigerator, storage cabinets, and equipment for hot and cold nourishments between scheduled meals. The nourishment area shall include space for trays and dishes used for non-scheduled meal service. Provisions and space shall be included for separate temporary storage of unused and soiled dietary trays not picked up at mealtime. A hand washing station shall be in or immediately accessible from the nourishment area;

(k) Ice machine: Each nursing unit shall have direct access to equipment to provide ice for treatments and nourishment. Ice-making equipment may be in the clean utility room or area or at the nourishment station. Ice intended for human consumption shall be from self-dispensing icemakers;

(l) Equipment storage room(s) or alcove(s): Appropriate room(s) or alcove(s) shall be provided for storage of equipment necessary for patient care as required by the functional program, the location of which shall not interfere with the flow of traffic. Each patient care unit shall provide sufficient storage area(s) located on the patient floor to keep the required corridor width free of all equipment and supplies, but at least 10 square feet per patient bed shall be provided. If stretchers and wheelchairs are stored on the patient care unit, additional storage space shall be provided;

(m) In remodel projects that do not include bathing facilities in all existing patient rooms, common use showers and bathtubs shall be provided in accordance with OAR 333-535-0260(6);

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(n) Emergency equipment storage: Space for emergency equipment such as "crash carts" shall be provided. This space shall be out of traffic, under the direct control of the nursing staff and in close proximity to the nurses' station;

(o) Housekeeping room: One housekeeping room shall be provided for each patient care unit or nursing floor. It shall be directly accessible from the patient care unit or floor and may serve more than one patient care unit on a floor. At least one housekeeping room per floor shall contain a service sink or floor receptor and space for the storage of supplies and housekeeping equipment and cart. A minimum of 35 square feet shall be provided for each housekeeping room. This housekeeping room shall not be used for other departments and patient care units that are specifically required by rule to have separate housekeeping rooms; and

(p) Low voltage room/closet(s), electrical room/closet(s) and other technical support spaces shall be provided as required to meet the service needs of the patient care unit.

(3) Patient care units shall comply with the requirements of OAR 333-535-0260, 333-535-0270, 333-535-0280, 333-535-0300 and 333-535-0310. Additional rule requirements may apply to specialty patient care units.

Stat. Auth.: ORS 441 & 442

Stats. Implemented: ORS 441 & 442

Hist.: OHD 1-2002, f. & cert. ef. 2-28-02; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05

333-535-0061

Psychiatric Patient Care Units and Rooms

(1) The design of inpatient psychiatric patient care units shall be supportive of the types of psychiatric therapies provided for patients and their psychiatric care needs. Interior finishes, lighting and furnishings shall, to the extent practicable, reflect a residential rather than an institutional setting with an emphasis on natural light and exterior views while not compromising patient privacy and safety design. Inpatient psychiatric patient care units shall include patient rooms meeting the requirements of section (4) of this rule and service areas meeting the requirements of section (5) of this rule.

(2) Patient and Staff Safety Assessment. The hospital psychiatric care staff and the hospital administration, in consultation with the project architects, shall develop a Patient and Staff Safety Assessment which addresses security and safety design features and devices. A copy of this Assessment shall accompany construction documents submitted to the Licensing Plans Review Program. The Patient and Staff Safety Assessment shall include at least the following elements:

(a) A statement explaining the psychiatric population groups served;

(b) A discussion of the capability for staff visual supervision of patient ancillary areas and corridors;

(c) A discussion of the risks to patients, including self injury, and the project solutions employed to minimize such risks;

(d) A discussion of building features and equipment, including items which may be used as weapons, which are intended to minimize risks to patients, staff and visitors;

(e) A statement explaining how potentially infectious patients will be managed; and

(f) A discussion of outdoor areas used by patients.

(3) Except as permitted under OAR 333-515-0060, every psychiatric and general hospital that provides psychiatric services shall have at least one psychiatric holding room which meets the requirements of section (7) of this rule and OAR 309-033-0720(3)(e).

(4) Psychiatric patient care rooms shall comply with the requirements of OAR 333-535-0025, except as follows:

(a) A nurse call system is not required. If included, provisions shall be made for the easy removal or securing of call button outlets;

(b) Patient toilets shall not have bedpan flushing devices;

(c) Hand washing stations are not required in patient rooms;

(d) Visual privacy in multi-bed rooms (e.g., cubicle curtains) is not required;

(e) Each patient room shall be provided a private toilet room and hand washing station. Grab bars are only required in rooms required to be accessible to the disabled; and

(f) Patient rooms shall comply with the requirements of section (6) of this rule.

(5) Psychiatric patient care unit service areas shall comply with the requirements of OAR 333-535-0025, except as follows:

(a) A secured storage area shall be provided for patients' belongings that are determined to be potentially harmful;

(b) A secured storage station will be provided for storing law enforcement weapons prior to officers entering the patient care unit;

(c) The medication station shall include provision against unauthorized access;

(d) Between meal nourishment(s) facilities within the unit shall be one, or a combination of the following:

(A) A nourishment station;

(B) A kitchenette, designed for patient use, with a sink and a keyed switch or other acceptable method for staff control of any heating and cooking devices; or

(C) A kitchen service within the unit that includes a hand washing station, storage space, refrigerator and facilities for full meal preparation. A keyed switch or other acceptable method for staff control of any heating and cooking devices is required.

(e) All storage spaces within the psychiatric patient care unit shall be secured from patient access;

(f) A bathtub or shower shall be provided for every six beds not otherwise served by bathing facilities within the patient rooms. Bathing facilities shall be designed and located for patient safety, convenience, privacy and shall comply with section (6) of this rule;

(g) A separate charting area shall be provided with provisions for visual and acoustical privacy. Viewing windows to permit observation of patient areas by the charting nurse or physician may be used if the arrangement is such that patient files cannot be read from outside the charting area. Viewing windows shall meet the requirements of section (6)(g) of this rule;

(h) At least two separate social spaces, one appropriate for noisy activities and one for quiet activities shall be provided. The combined area shall be at least 40 square feet per patient with each space being at least 120 square feet in size. These spaces may be shared by dining activities;

(i) Space for group therapy shall be provided. This space may be combined with the quiet space required by subsection (5)(h) of this rule when the unit accommodates 12 or fewer patients and when at least 225 square feet of closed private space is available for group therapy activities;

(j) Securable patient laundry facilities with an automatic washer and dryer and secured space for chemicals shall be provided;

(k) Each psychiatric patient care unit shall include, or have close access to, a soiled utility room that meets the requirements of OAR 333-535-0260(5) or a soiled holding room. A soiled holding room shall meet all the requirements of a soiled utility room except that a clinical sink may be omitted; and

(l) The following elements shall also be provided, but may be located either within the psychiatric patient care unit or conveniently accessible to the unit:

(A) Room(s) for examination and treatment of at least 80 square feet in size. Examination and treatment room(s) for medical-surgical patients may be shared by psychiatric unit patients. The shared room(s) may be on a different floor than the psychiatric patient care unit if it is conveniently accessible to the unit;

(B) Separate consultation room(s), lockable from the outside. Each consultation room shall have a minimum floor space of 100 square feet and shall be provided at a room-to-bed ratio of one consultation room for every 12 psychiatric beds. The room(s) shall be designed for acoustical and visual privacy and be constructed to achieve a noise reduction of at least 45 decibels;

(C) Separate space for patient therapy/multipurpose use. The greater of at least 300 square feet or at least 15 square feet per patient shall be provided. The space shall include a hand washing station, work counter(s), storage and space for displays and may serve more than one psychiatric patient care unit. However, when a psychiatric patient care unit contains less than 12 beds, the therapy and other functions may be performed within the noisy activities area required by subsection 5(h) of this rule if at least an additional 10 square feet per patient is provided; and

(D) A conference and treatment planning room, with 45 decibels sound reduction acoustic separation, for use by psychiatric patient care unit staff.

(6) Patient and staff safety features, security and safety devices shall not, to the extent practicable, be presented in a manner to attract or invite tampering by patients. Design, finishes and furnishings shall be designed and installed to minimize the opportunity for patients to cause injury to themselves or others. Special design considerations for prevention of self injury and injury to staff and others shall include:

(a) Visual control of nursing unit corridors, passive activity areas and outdoor areas shall be provided;

(b) Hidden alcoves are prohibited;

(c) Non-patient areas, including staff support rooms, mechanical and electrical spaces shall be secured from patients;

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(d) Door closers and door and cabinet hardware, including hinges in patient areas, shall be designed to prevent attachment of other articles and to limit possible patient or staff injury;

(e) Doors to patient toilet and shower rooms shall not swing into the room. These doors shall either not be lockable from within the room or shall be provided with privacy locks which can be opened by staff with a key or tool. Hardware shall be designed to preclude patients from tying the door closed;

(f) Furnishings, movable equipment and accessories shall be addressed by the Patient and Staff Safety Assessment required by section (2) of this rule;

(g) Windows, including interior and exterior glazing, shall be non-operable and shall be of break-resistant material (i.e., will not shatter). Window sills and curtains and blinds shall be constructed to prevent attachment of other articles;

(h) Curtains and blinds shall be constructed to break-away with a vertical load of greater than 40 pounds;

(i) Ceilings in patient bedrooms, toilet and shower rooms shall be of continuous bonded construction. T-bar ceilings with lay-in tiles are not allowed;

(j) The ceiling and air distribution devices, lighting fixtures, sprinkler heads, smoke detectors, and other appurtenances shall be designed and installed to be tamper resistant, non-breakable, prevent the attachment of other articles and to limit possible patient or staff injury in patient rooms, toilet and shower rooms;

(k) Flooring base in patient rooms, toilet and shower rooms shall be installed to preclude removal by patients;

(l) Shower, bath, toilet and sink plumbing fixture hardware and accessories, including grab bars and toilet paper holders, shall prevent attachment of other articles and removal by patients. Shut-offs under patient sinks shall be covered and secured to prevent patient access;

(m) Grab bars, if provided, shall be contiguous to the wall so that nothing can pass between the edge of the rail and the wall;

(n) Toilet flush valves shall be recessed or of the push button type;

(o) Hand washing station faucet hardware shall be recessed or of the push button type to preclude patient or staff injury;

(p) Shower curtains, if provided, shall have a breakaway maximum of 40 pounds and be supported on curtain tracks attached or flush to the ceiling;

(q) Shower heads shall be sloped or otherwise designed to prevent attachment of other articles;

(r) Fire extinguisher cabinets and fire alarm pull stations shall be located or installed to prevent inappropriate use;

(s) Electrical outlets in patient areas shall be of a ground fault interrupter type ("GFI") or shall be protected by GFI breakers at electrical panels;

(t) Patient mirrors shall be non-breakable and shatterproof;

(u) Medical gas outlets, if provided, shall be located or installed to prevent patient access;

(v) All devices attached to walls, ceilings and floors and all door and window hardware shall be tamper resistant and be securely fastened with tamper proof screws;

(w) All exit door hardware shall have concealed rods, if any are used, and they shall not be removable by patients. Door closure and panic bars, if provided, shall not allow attachment of other articles;

(x) Time delay closers shall not be used on locked doors; and

(y) Outdoor areas shall be secured in accordance with the Patient and Staff Safety Assessment required by section (2) of this rule.

(7) Psychiatric Holding Rooms. Psychiatric holding rooms shall comply with the following requirements:

(a) As required by section (3) of this rule, and except as permitted by OAR 333-515-0060, each general or psychiatric hospital shall have at least one psychiatric holding room. A minimum of one psychiatric holding room is required for every 24 psychiatric beds or fraction thereof. The rooms shall be in close proximity to a nurses' station. Each room shall be for only one patient and shall be at least 80 square feet in size. The design of the room shall prevent patient hiding and minimize the potential for escape and self injury;

(b) Psychiatric holding rooms shall meet the requirements of section (6) of this rule;

(c) Outside room corners, door hardware protrusions and other projections shall be avoided to minimize points for possible patient injury;

(d) No items shall be attached to the walls and there shall be no exposed curtains, drapes, rods or furniture, except a portable bed which can

be removed if necessary. Beds which are securely fastened to the floor are allowable but must have no sharp protrusions, such as bed posts or corners;

(e) Wall and other room finish materials shall be securely constructed to resist attempts at intentional damage;

(f) Exposed pipes or electrical wiring is prohibited. Electrical outlets, if provided, shall be permanently capped or covered with a metal shield which opens with a key and shall be circuited and controllable from outside the room. Ceiling lights shall be unbreakable and shall be either recessed or surface mounted;

(g) Room construction shall contain no readily combustible materials (i.e., wood or vinyl wall covering surfaces). If the room interior is padded with combustible materials, such materials shall meet the requirements of the National Fire Protection Association (NFPA) 101 Code as enforced by the State Fire Marshall having jurisdiction;

(h) Sprinkler heads shall be of a recessed pop-down type and shall have a breakaway strength of under 80 pounds;

(i) A toilet and hand washing station which meets the requirements of section (6) of this rule shall be available for patient use but shall not be located within the room;

(j) The door to the room shall open outward and shall include a viewing window of shatterproof glass or plastic through which the entire room may be viewed from the outside before entering; and

(k) The door to the room shall be lockable from the outside and shall include tamper-proof hardware. The lock must release with initiation of the fire alarm, sprinkler flow or power failure as required by the Oregon Structural Speciality Code and NFPA 101 Code as enforced by the appropriate building codes agency and fire marshal.

(8) Child and Adolescent Psychiatric Units. The requirements of sections (1) through (6) of this rule and of section (7) of this rule, if a psychiatric holding room is provided, shall apply to child and adolescent psychiatric units, except as follows:

(a) The environment of the unit shall reflect the age, social and developmental needs of children and adolescents, including space to accommodate family and other care givers;

(b) At least one single occupancy timeout room shall be provided;

(c) An outdoor activity area shall be provided with a minimum of 50 square feet per patient but not less than 400 total square feet; and

(d) Child and adolescent care units shall be physically and visually separate from one another and from adult care units.

(9) Geriatric, Alzheimer and Other Dementia Units. The requirements of sections (1) through (6) and of section (7) of this rule, if a psychiatric holding room is provided, shall apply to geriatric, Alzheimer and other dementia units, except as follows:

(a) Single patient rooms shall be at least 120 square feet in size. Multiple patient rooms shall provide at least 100 square feet per patient;

(b) A nurse call system meeting the requirements of section (6) of this rule shall be provided. Provisions shall be made for the removal or covering of call button outlets;

(c) Handrails shall be provided on both sides of corridors used by patients. These handrails shall be contiguous with the wall so that nothing may pass between the rail and wall;

(d) Doors to patient rooms and patient ancillary use areas shall be a minimum of 3 feet 8 inches in clear width;

(e) Slip resistant flooring surfaces shall be provided in all bathing rooms; and

(f) Secure storage for wheelchairs shall be provided in a location readily accessible to the unit.

(10) Forensic Psychiatric Units. The requirements of sections (1) through (6) of this rule shall apply to forensic psychiatric units, except as follows:

(a) Security vestibules or sally ports are required at the unit entrance;

(b) Additional treatment areas, police and courtroom space, and special security considerations shall be provided in accordance with the Patient and Staff Safety Assessment; and

(c) Children and adolescents shall be separated from one another as defined by the functional program. Children and adolescents shall also be physically and visually separate from adult care units.

Stat. Auth.: ORS 441 & 442

Stats. Implemented: ORS 441 & 442

Hist.: OHD 13-2002, f. & cert. ef. 9-27-02; PH 18-2003(Temp), f. & cert. ef. 10-31-03 thru 4-26-04; PH 7-2004, f. & cert. ef. 3-17-04; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05

333-535-0080

Emergency Department

(1) General. Hospitals offering emergency patient care services shall include facilities required under section (2) of this rule. If outpatient clini-

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cal services are to be included as a part of the Emergency Department, elements under OAR 333-535-0085 shall also be provided.

(2) Hospitals providing emergency services shall include the following:

(a) Entrance, located on the same level and in the close proximity to the emergency department, sheltered from the weather, and with provision for ambulance and disabled pedestrian access. Emergency entrance location shall be marked by a lighted sign;

(b) A reception and control area conveniently located near the entrance, waiting area(s), and treatment room(s). The control station(s) shall be located to permit staff observation and control of access to treatment areas;

(c) Public waiting space with toilet facilities, public telephone, and drinking fountain;

(d) Treatment room(s). A minimum of one treatment room with not less than 250 square feet of clear floor space. This space may be subdivided into curtained treatment areas not less than 120 sq. ft. exclusive of toilets, waiting area and storage casework. Multiple bed treatment rooms shall provide a minimum of 80 square feet per patient cubicle with a minimum of five feet between beds. Each treatment room shall contain an examination light, medication storage, work counter, hand washing facilities, medical gas outlets per Table 5 (OAR 333-535-0300), electrical outlets above floor level to accommodate required equipment, suction, and space for storage of emergency equipment such as emergency treatment trays, defibrillator, cardiac monitor, and resuscitator;

(e) Trauma/cardiac rooms for emergency procedures, including emergency surgery, when provided apart from the hospital's surgery department, shall have at least 250 square feet of clear floor space. Each room shall have cabinets and emergency supply shelves, image readers, examination lights, and counter space for writing. Cubicle curtains for privacy shall be provided to accommodate more than one patient at a time in the trauma room. Provisions shall be made in each room for monitoring equipment. There shall be storage provided for immediate access to protective attire for infection control. Doorways leading from the ambulance entrance to the cardiac trauma room shall be a minimum of 5 feet wide to simultaneously accommodate stretchers, equipment, and personnel. Medical gas outlets shall equal that required of an operating room in Table 5, OAR 333-535-0300;

(f) Provisions for orthopedic and cast work. There shall be storage for orthopedic supplies. These provisions may be in a separate room or rooms or in a treatment room. If a sink is used for the disposal of plaster of paris, a plaster trap shall be provided. The amount of clear floor space for this area shall be dependent on the procedures planned and the equipment needed;

(g) Scrub stations or a hand wash lavatory located in or adjacent to each trauma and/or orthopedic room;

(h) Provisions for infection control and for the handling of a patient requiring isolation in accordance with the hospital's Infection Control Risk Assessment;

(i) Communication center with related equipment shall be convenient to the control station(s);

(j) Access to radiology and laboratory services;

(k) Storage area out of line of traffic for stretchers and wheelchairs with access from emergency entrances;

(l) Staff work and charting area(s). This may be combined with reception and control area or located within the treatment room;

(m) Storage out of traffic and under staff control for general medical/surgical emergency supplies, medications and equipment such as a ventilator, defibrillator, and splints;

(n) Soiled workroom or area containing clinical sink, work counter and sink equipped for hand washing, waste receptacle, and linen receptacle; and

(o) Patients' toilet room convenient to treatment room(s) which shall include a nurse call device or other approved alternative to summon staff.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 441 & 442

Stats. Implemented: ORS 441 & 442

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 213, f. 3-25-69; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(8); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0240; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; OHD 1-2002, f. & cert. ef. 2-28-02; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05

333-535-0085

Hospital Immediate Care and Minor Emergency Facilities

This section applies to immediate care and minor emergency facilities which are physically separate from the Emergency Department and do not possess a trauma level designation as defined by OAR 333-200-0080. Such services may be located within an inpatient facility or in a satellite location

which is under direct control of a general hospital and is licensed as a part of the general hospital. The following elements shall be provided:

(1) Administration and public areas:

(a) Entrance. Located at grade level or accessible by ramp, sheltered from weather, and disabled accessible.

(b) Lobby and waiting areas. These shall include access to:

(A) Wheelchair storage space(s);

(B) Reception and information counter or desk;

(C) Waiting space(s);

(D) Public toilet facilities;

(E) Public telephone(s); and

(F) Drinking fountain(s).

(c) Interview space(s) for private interviews relating to social service, credit, and admissions.

(d) General or individual office(s) for business transactions, records, and administrative and professional staffs. Separation from public areas for confidentiality shall be provided.

(e) Secure storage for employees' personal property.

(f) Bulk storage facilities for office supplies and patient care supplies.

(g) A janitors' closet with a floor sink or service sink, unless available elsewhere in the building.

(2) Clinical Areas:

(a) Examination room(s) for medical, obstetrical, and similar examinations shall have a minimum floor area of 80 square feet, excluding such spaces as vestibule, toilet, closet, and work counter (whether fixed or movable). Arrangement shall permit at least 2' 8" clearance at each side and at the foot of the examination table. A lavatory or sink equipped for hand washing and a counter or shelf space for writing shall be provided.

(b) Treatment room(s) for minor surgical procedures and cast procedures shall have a minimum floor area of 120 square feet, excluding such spaces as vestibule, toilet, closet, and work counter (whether fixed or movable). The minimum room dimension shall be 10'0". Work counters, storage cabinets, and lavatory or sink equipped for hand washing shall be provided.

(c) Facilities for charting and for clinical records. Work counter, communication system, and space for supplies shall be provided. A separate space may be omitted if these functions are accommodated in each examination room and each treatment room.

(d) A Cardiac Pulmonary Resuscitation emergency cart, away from traffic but immediately available to all areas including entrance and receiving areas.

(e) Medication storage meeting Board of Pharmacy rules, OAR chapter 855, division 41.

(f) Clean storage. A separate room or enclosed closet(s) for storing clean and sterile supplies shall be provided. This storage shall be in addition to cabinets and shelves in treatment rooms. Sterile items shall be protected from dust.

(g) Soiled holding area. Provisions shall be made for separate collection, storage and disposal of soiled materials. Access to hand washing facilities shall be provided.

(h) Sterilizing facilities. A system for sterilizing equipment and supplies shall be provided. Sterilizing procedures may be done on or off-site. Disposable items may also be used to satisfy functional needs.

(i) Laboratory facilities, meeting laboratory licensing rules under OAR 333-024 and 333-535-0090 shall be readily available.

(j) Staff lounge and toilet facilities shall be readily available to the unit.

(k) Patient toilets. Provide patient toilet(s) readily available or within the clinic space.

(l) If radiographic equipment is provided, the installation shall meet rules of the Department of Human Services, Health Services, Radiation Protection Services under OAR chapter 333, divisions 100 through 119.

Stat. Auth.: ORS 441 & 442

Stats. Implemented: ORS 441 & 442

Hist.: OHD 2-2000, f. & cert. ef. 2-15-00; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05

333-535-0090

Laboratory Suite

(1) Inpatient hospital laboratory facilities shall be provided for hematology, clinical chemistry and urinalysis, and may include cytology, pathology, immunohematology, microbiology, serology, and immunology to meet requirements for services as stated in General Rules (OAR 333-535-0010). These may be provided within the hospital or through an effective contract arrangement with a nearby laboratory service. Hospital laboratories located in freestanding clinics shall conform to rules under subsection (2) of this rule. The following shall be provided:

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(a) Laboratory work counter(s) with space for microscopes, appropriate chemical analyzer(s), incubator(s), and centrifuge(s). Work areas shall include sinks with water and access to electrical services as needed;

(b) Refrigerated blood storage facilities for transfusions shall be provided. Blood storage refrigerator shall be equipped with temperature-monitoring and alarm signals located for 24-hour response. Blood banks must be provided emergency power for continued cooling during an interruption of the normal power supply;

(c) Lavatory(ies) or sink(s) designated and equipped for hand washing purposes only;

(d) Appropriate storage facilities, including refrigeration shall be provided for reagents, patient specimens, controls, and supplies;

(e) Urine and feces collection rooms shall be equipped with a toilet and hand washing facilities. This may be outside the laboratory suite;

(f) Blood collection facilities shall include a work counter, conveniently located hand washing facility, space for patient seating and sharps container(s);

(g) Chemical safety provisions, which may include emergency shower, eye flushing devices, and appropriate storage for flammable liquids shall be provided in accordance with Oregon State Public Health Laboratory Licensing rules, OAR 333-024-0005 through 333-024-0055, and Oregon OSHA Administrative Rules;

(h) Facilities and equipment for sterilization of contaminated specimens before transport to incineration facilities in accordance with Oregon State Public Health Laboratory Licensure Rules and Oregon OSHA Administrative Rules;

(i) If radioactive materials are used or stored, facilities shall be available for their safe storage and disposal;

(j) Administrative areas including offices as well as space for clerical work, filing, and record maintenance shall be provided apart from testing or storage areas;

(k) Lounge, locker, and toilet facilities shall be conveniently located for laboratory staff. These may be outside the laboratory area and shared with other departments; and

(l) Construction plans shall indicate location(s) for all non-portable laboratory equipment and the building utility systems to be provided serving each.

(2) Laboratory services serving hospital outpatient clinics may be onsite or through an effective contractual arrangement with a laboratory service or through the primary hospital laboratory. Services may include hematology, clinical chemistry, urinalysis, cytology, pathology, microbiology, serology, immunology, and immunohematology. When these services are not effectively provided elsewhere, the following shall be available within the clinic:

(a) Laboratory work counter(s), with sink;

(b) Designated sink equipped for hand washing purposes only;

(c) Storage cabinet(s) or closet(s);

(d) Specimen collection room with a toilet, hand wash sink, and an area for handling and storing specimens;

(e) Blood collection facilities including secure seating, a work counter, and access to hand washing facilities. Collection facilities may be within the laboratory or in satellite location(s); and

(f) Refrigeration for storage of reagents, controls and patient specimens as necessary. Separate refrigeration must be provided for injectibles and food or drink which is to be consumed by patients or staff.

(3) Laboratory units shall conform to OAR chapter 024, and the rules there under regarding laboratory requirements. Standards contained in NFPA 99 regarding laboratories and health related institutions are also required.

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

Stat. Auth.: ORS 441

Stats. Implemented: ORS 441

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80 Renumbered from 333-23-0200(9); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0024; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05

333-535-0100

Imaging Facilities

(1) General: Imaging facilities are those which provide fluoroscopy, radiography, mammography, tomography, computerized tomography scanning, ultrasound, magnetic resonance, angiography, and other similar techniques. Room layouts, including clearances, must meet equipment manufacturers' minimum recommendations.

(2) Radiation Protection: All radiation producing equipment installations must comply with Department of Human Services, Health Services, Regulations for Control of Radiation, OAR chapter 333, divisions 100 to

120, and be licensed by the Department. Where protected alcoves with view windows are required, a minimum of 1 foot 6 inches between the view window and the outside partition edge shall be provided.

(3) Angiography. The following shall be provided:

(a) Procedure rooms shall be a minimum of 400 square feet in size;

(b) A control room shall be provided to house associated staff and equipment. A view window shall be provided to permit full view of the patient;

(c) Area for image reading;

(d) A scrub sink located outside the staff entry to the procedure room shall be provided for staff use;

(e) Facilities shall be available for patients waiting on stretchers which are out of the line of traffic;

(f) Storage for equipment; and

(g) Facilities shall be available within the facility for extended post-procedure observation of outpatients.

(4) Cardiac Catheterization Lab. Facilities for cardiac catheterization may be combined with the imaging department or be part of the surgery suite. If provided, cardiac catheterization lab facilities shall meet the rules for angiography rooms under subsection (3) above. The following additional requirements shall be provided:

(a) A separate scheduling and staff work space, cardiologist's office and staff toilet shall be provided when the facilities are located outside the imaging suite; and

(b) There shall be access to a clean assembly/workroom with Hi-vacuum or gravity steam sterilizers and sterilization equipment to accommodate heat sensitive equipment.

(5) Computerized Tomography (CT) Scanning. The following shall be provided:

(a) Procedure rooms shall be configured to accommodate equipment in accordance with the equipment manufacturers' recommendations;

(b) Control room located to allow for film processing and designed to accommodate the computer and other controls for the equipment. A window shall be provided to permit full view of the patient; and

(c) A conveniently available patient toilet.

(6) Diagnostic X-ray (Radiography). The following shall be provided:

(a) Radiography room(s), sized to accommodate the functional program;

(b) Each X-ray room shall include a shielded control alcove designed to provide a full view of the patient when the table is in the tilt position or the chest X-ray is being utilized. For mammography machines with built-in shielding for the operator, the alcove may be omitted when approved by the Department of Human Services, Health Services, Radiation Protection Services; and

(c) Rooms primarily utilized for fluoroscopy shall have direct access to a toilet room.

(7) Magnetic Resonance Imaging (MRI). The following shall be provided:

(a) MRI procedure room(s) to accommodate the functional program and meet equipment manufacturers' recommendations;

(b) Secure storage for patient belongings;

(c) A control room with full view of the MRI;

(d) A computer room as needed to support the specific equipment installation;

(e) Cryogen storage when service to replenish supplies is not otherwise available;

(f) Power conditioning and voltage regulation equipment as well as direct current (DC) when required by the equipment manufacturer;

(g) Magnetic shielding and radio frequency shielding when required by the equipment manufacturer;

(h) Patient holding area convenient to the MRI unit and large enough to accommodate stretchers; and

(i) Venting of cryogen exhaust to the outside.

(8) Ultrasound. The following shall be provided:

(a) Procedure room(s) meeting equipment manufacturers' minimum room size and configuration recommendations; and

(b) A patient toilet, available to each procedure room and accessible from the corridor.

(9) Support Spaces. The following spaces shall be common to the imaging department and shall be minimum requirements unless stated otherwise:

(a) Patient waiting areas, out of the line of traffic;

(b) Control desk and reception area;

(c) Patient holding area under staff control, designed to accommodate inpatients on stretchers and outpatients;

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(d) Patient toilet room with hand washing convenient to waiting rooms and directly accessible from each fluoroscopy room;

(e) Dressing area with convenient access to waiting areas and X-ray rooms;

(f) Access to staff toilet, lounge and locker facilities which shall be within or closely available to the department;

(g) Film storage facilities for active and inactive files;

(h) Storage for unexposed film;

(i) Contrast media preparation area with sink and barium trap, counter and storage to allow mixing of contrast media. Where prepared media is used, this area may be omitted and storage shall be provided for the media;

(j) A darkroom shall be provided for film processing unless the processing equipment does not require a darkroom for loading and transfer;

(k) If automatic film processors are used, a receptacle of adequate size with hot and cold water for cleaning processor racks shall be provided;

(l) Quality control room. An area or room for immediate viewing of film after processing shall be provided unless other viewing facilities are immediately available;

(m) Janitorial facilities, including a service sink or floor receptacle and storage for cleaning equipment and supplies;

(n) Hand washing facilities shall be provided in each procedure room unless it is used only for routine diagnostic screening such as for chest X-rays and where the patient is not physically handled by the staff. Hand washing shall be provided convenient to MRI, CT and ultrasound rooms, but it need not be within the room;

(o) Clean storage area. Provisions shall be made for storage of clean supplies and linens;

(p) Soiled holding area. Provisions shall be made for the separate storage of soiled materials, linens and trash. Hand washing facilities shall be closely available. If cleaning and disinfecting of equipment occurs within the imaging department, a counter, sink, hand wash lavatory and exhaust ventilation shall be provided; and

(q) Provisions shall be made for locked storage of medications and drugs when the program includes their use.

Stat. Auth.: ORS 441 & 442

Stats. Implemented: ORS 441 & 442

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(10); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0250; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05

333-535-0110

Surgical Facilities

A surgical unit shall consist of but not be limited to facilities as follows for exclusive use of the surgery department, unless otherwise noted:

(1) The number of operating rooms and recovery beds and the sizes of the service areas shall be based on the expected surgical workload. The surgical suite shall be located and arranged to prevent non-related traffic through the suite. Also see OAR 333-535-0300 for mechanical rules and OAR 333-535-0310 for electrical rules which apply;

(2) Certain rules of this section differ dependent upon the type of surgical procedures performed. These are classified in the following two categories:

(a) Minor Surgical and Diagnostic Procedures: Minor procedures are those that conform to the criteria listed in (A) through (D) based on an assessment of the patient. These procedures are non-invasive and require no general anesthetic.

(A) Anesthesia is limited to local anesthesia and/or conscious sedation;

(B) Procedure time (duration) is less than two hours;

(C) Procedure is non-invasive with low risk for infection; and

(D) Patient assessment indicates no special risks for cardiorespiratory complications.

(b) Major Surgical and Diagnostic Procedures are those which exceed the criteria described for Minor Surgical and Diagnostic Procedures in OAR 333-535-0110(2)(a).

(3) Operating Rooms:

(a) One or more operating rooms shall be provided, each of which shall have a minimum clear area of 360 square feet exclusive of fixed cabinets and built-in shelves. The minimum dimension in new construction areas shall be 18'0". Each operating room shall provide a system for emergency communication with the surgical control station which can be operated without use of the hands, but which is not foot operated. Image readers for handling at least two films at the same time shall also be provided. No plumbing fixtures or open drains shall be provided in operating rooms except as stipulated below.

(b) Operating room(s) for orthopedic surgery, when provided, shall in addition to meeting subsection (a) of this section, have enclosed storage space for splints and traction equipment. Storage may be outside the operating room but must be located for convenient access. If plaster of paris is used for cast work, also provide a plaster sink outside the operating room, but within the operating suite.

(c) Operating rooms for cardiovascular surgery, when provided, shall in addition to meeting subsection (a) of this section, provide a minimum clear area of 400 square feet exclusive of fixed cabinets and built-in shelves. Appropriate plumbing connections shall be provided in both the cardiovascular operating room and pump room.

(d) Operating rooms for surgical cystoscopic and surgical endoscopic procedures and operating rooms dedicated to eye surgery, when provided, shall meet requirements of subsection (a) of this section, but clear area of the room shall be a minimum of 250 square feet exclusive of fixed cabinets and built-in shelves. If cystoscopy rooms are used for procedures other than cystoscopy, provisions must be made to allow cleaning and sealing of any floor drains, and such procedures must be included in the hospital's written infection control policy.

(e) Operating rooms for minor surgical procedures, as defined in subsection (2) of this section, shall meet requirements of subsection (a) of this section, except that clear area of the room shall be a minimum of 200 square feet exclusive of fixed cabinets and built-in shelves and minimum dimensions do not apply. Film illuminators are required only if procedures involve the use of X-rays.

(f) Despite requirements under subsections (a) through (e) of this section, needs for some procedures may require additional clear operating room space, and special plumbing and mechanical features. Such specialized operating rooms are not addressed by subsections (a) through (e) of this section, and are the responsibility of the hospital and their design consultants.

(4) Service areas: Services, except the enclosed soiled workroom mentioned in subsection (f) of this section and the janitors' closet in subsection (t) of this section, may be shared with obstetrical facilities if the functional program and project design reflect this concept. Service areas, when shared with delivery rooms, shall be arranged to avoid the need for patients or staff to pass between the operating room and the delivery room areas. (See also obstetrical rules under OAR 333-535-0120.) The following services shall be provided:

(a) Control station located to permit visual observation of all traffic into and within the suite;

(b) Administrative and administrative support space in accord with the hospital's program needs;

(c) Sterilizing facility(ies) with high speed autoclave(s) for emergency use. Other facilities for processing and sterilizing reusable instruments, etc., may be located in another hospital department such as Central Services. Immediate access to sterilizing facilities is not required where only disposable supplies, instruments and equipment are used. Sterilization equipment shall conform to the Oregon Boiler and Pressure Vessel Specialty Code, ORS 480.525(1)(e);

(d) Medication storage and distribution facilities. Provisions shall be made for storage and preparation of medications administered to patients. A refrigerator and storage system meeting the requirements of Oregon Board of Pharmacy rules, OAR chapter 855, division 041 shall be provided. Hand washing facilities shall be provided in or accessible to each area or room;

(e) Scrub facilities. For major surgical procedures, two scrub facilities shall be provided near the entrance to each operating room. Two scrub positions may serve two operating rooms if both are located adjacent to the entrance of each operating room. For minor surgical procedures, a scrub sink or hand wash lavatory shall be provided in or accessible to each room. This sink shall be equipped with fittings usable without the use of hands;

(f) Soiled workroom. An enclosed soiled workroom for the exclusive use of the surgical suite staff or soiled holding room that is part of a system within the building for the collection and disposal of soiled material shall be provided. The soiled workroom shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle, and linen receptacle. When a soiled holding room is used, the clinical sink and work counter may be omitted from that room. (Also see subsection (g) of this section for fluid waste disposal facilities.) Soiled work and/or storage areas shall not have direct connection with operating rooms or other sterile activities;

(g) Fluid waste disposal facilities. These shall be located convenient to, but not connected with, the operating rooms. A clinical sink or equivalent equipment in a soiled workroom or in a soiled holding room would

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meet this standard if convenient for use. When the surgical program does not include procedures with substantial liquid or solid wastes (e.g. minor eye surgery), a clinical sink is not required;

(h) Clean workroom or a clean supply room. A clean workroom is required when clean materials are assembled within the surgical suite prior to use. A clean workroom shall contain work counter, sink equipped for hand washing, and space for clean and sterile supplies. If the functional program defines a system for the storage and distribution of clean and sterile supplies in a clean supply room, the counter and sink may be omitted. The clean workroom or supply room may be shared with the delivery suite when provisions for joint use are included in the hospital's infection control policy and arrangement allows for direct access from both surgery and delivery suites. (See also obstetrical rules under OAR 333-535-0120.);

(i) Medical gas storage facilities. Storage of bulk medical gases shall be provided outside or inside the facility. Provisions shall be made for additional separate storage of reserve gas cylinders to complete at least one day's procedures. Storage facilities shall be in compliance with National Fire Protection Association (NFPA) 99;

(j) Anesthesia workroom. Inhalation anesthesia workroom for cleaning, testing, and storing anesthesia equipment shall contain work counter and sink. Provisions shall be made for separated storage of clean and soiled items. When facilities for cleaning and testing are available elsewhere in the building or the surgical program does not involve substantial anesthesia, a separate workroom is not required;

(k) Anesthesia storage. Anesthesia storage facilities shall be provided for anesthesia-related materials stored within the surgery suite;

(l) Equipment storage room(s) for equipment and supplies used in surgical suite;

(m) Staff clothing change areas. Appropriate areas shall be provided for male and female personnel including orderlies, technicians, nurses and doctors working within the surgical suite. The areas shall contain lockers, showers, toilets, lavatories equipped for hand washing, and space for donning scrub attire. In surgical suites providing general anesthesia and invasive surgical procedures, these areas shall be arranged to encourage a traffic pattern so that personnel entering from outside the surgical suite can change and move directly into the surgical suite. Showers are not required in suites limited to minor procedures;

(n) Outpatient surgery change areas. If the functional program defines an outpatient surgery component as part of the inpatient surgical suite, facilities shall be provided where outpatients may change from street clothing into hospital gowns and be prepared for surgery. This would include facilities for waiting, storage of clothing, toilets, and space for gowning. Separate clothes changing areas are not required when sufficient pre-operative holding cubicles are available;

(o) Phase 1 recovery. If the facility provides outpatient surgery, rooms or cubicles for postanesthesia care and recovery shall be provided. At least three feet shall be provided at each side of each bed or recovery lounge chair and at the foot of each bed as needed for circulation of staff and gurneys and wheelchairs. Recovery spaces shall be observable from a nursing station. Provide hand wash stations at a rate of one sink per six recovery beds;

(p) Phase 2 recovery spaces. Dedicated recovery spaces or a dedicated recovery lounge shall be provided in facilities where the surgical program includes patients who do not require postanesthesia recovery or who have completed postanesthesia recovery, but need additional time for observation by staff prior to leaving the facility. Access to toilet facilities shall be provided;

(q) Pre-surgical waiting area. In facilities with two or more operating rooms, a room or separate area shall be provided to accommodate stretcher patients waiting for surgery. This may be adjoining the post anesthesia recovery area and be serviced by the same staff nurse when feasible. The area shall be located to allow for nursing supervision and emergency communications;

(r) Storage areas for portable equipment used in surgery, such as portable X-ray unit, stretchers, fracture tables, warming devices, auxiliary lamps, etc. These areas shall not infringe on the width of exit corridors;

(s) Lounge, toilet facilities, and dictation and report preparation space for surgical staff. These facilities shall be provided in hospitals having three or more operating rooms and shall be located to permit use without leaving the surgical suite. A toilet room shall be provided near the recovery room(s);

(t) Janitors' closet. A closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided exclusively for the surgical suite;

(u) For major procedures, an area for preparation and examination of frozen sections. This may be part of the general laboratory if the system and procedures provide immediate results that will not unnecessarily delay the completion of surgery;

(v) Ice machine to supply ice for patient use and treatments;

(w) Provisions for refrigerated blood bank storage when major procedures are included; and

(x) Post anesthesia care unit for major surgical procedures. Each recovery unit shall contain a medication distribution station, hand washing facilities (at a rate of one sink per six beds), nurses' station with charting facilities and clinical sink. Provisions for bedpan cleaning, storage space for stretchers, supplies and equipment shall be closely available. The design shall provide clearance space of at least 3'0" between patient beds and between bedsides and adjacent walls. Provisions shall be made for isolation of infectious patients, although a separate isolation room is not mandated. At least one door to a recovery unit shall access directly from the surgical suite without crossing uncontrolled common hospital corridors. Separate and additional recovery space may be necessary to accommodate surgical outpatients, where applicable but is not required.

(5) Separate Outpatient Surgical Facilities. The following additional features shall be provided when an outpatient surgical facility is outside the inpatient hospital building or remote from the inpatient suite:

(a) Visual privacy shall be provided for registration, preparation, examination and recovery. Audible privacy shall be provided during registration;

(b) Provisions shall be made for patient examination, interview, testing and preparation prior to surgery;

(c) Outpatient surgical facilities not part of an inpatient hospital structure shall meet the requirements of the Oregon Structural Specialty Code as an I-1.2 or I-1.3 occupancy as appropriate. All such facilities shall meet the standards of the NFPA #101 and #99 Codes; and

(d) Administrative and Public Areas. The following shall be provided:

(A) A patient and visitor waiting room or area and information and reception desk or counter;

(B) Public telephone or other phone(s) usable by patients and visitors;

(C) Space(s) for private interviews relating to social services, credit and admission;

(D) Office space(s) for business transactions, records, and administrative and professional staff, and space and equipment for medical records dictating, recording and retrieving. These shall be separate from public and patient areas with provisions for confidentiality of records;

(E) Secure storage for staff clothing and personal effects; and

(F) General storage for administrative supplies.

(6) Dental Operations: Dental surgery facilities not part of a multi-specialty surgical unit shall except subsections (1) through (4) of this rule. Operating rooms dedicated to dental surgery shall also conform to the following:

(a) Operating rooms used for invasive maxillofacial and reconstructive dental procedures with general anesthesia shall meet the rules of an operating room for major surgical procedures, except that room size shall be a minimum of 250 square feet; and

(b) Operating rooms for extractions and minor operative procedures within limited anesthesia or conscious sedation shall provide a minimum of 132 square feet of clear space and include the following features:

(A) Four feet or more of clear space at one side of the dental chair and a clear access route for a stretcher or gurney; and

(B) Mechanical and electrical features of a minor surgical procedure room according to OAR 333-535-0300 and 333-535-0310.

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

Stat. Auth.: ORS 441 & 442

Stats. Implemented: ORS 441 & 442

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(11); HD 21-1987, f. & ef. 11-13-87; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0255; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05

333-535-0115

Endoscopy Facilities

If diagnostic endoscopy procedures are performed, the following shall apply:

(1) Diagnostic Procedure Room(s):

(a) Each diagnostic procedure room shall have a minimum clear area of 200 square feet exclusive of fixed cabinets and built-in shelves. If portable equipment is used for vacuum and oxygen, room size shall be increased to 225 square feet.

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(b) A hand washing fixture with hands-free controls shall be available in each procedure room.

(c) Station outlets for oxygen, vacuum (suction), and medical air shall be provided in accordance with Table 5, OAR 333-535-0300. Use of portable equipment is allowable when a piped-in central system is not available.

(d) Mechanical ventilation shall comply with OAR 333-535-0300, including Tables 2 and 3 of the same rule. If endoscopy rooms also serve for bronchoscopy services, these systems must meet ventilation requirements for this service in Table 2, OAR 333-535-0300.

(2) Instrument Processing Facilities. There shall be dedicated processing room(s) for cleaning and disinfecting instrumentation. Cleaning spaces shall allow for flow of instrumentation from the contaminated area to the clean area and, then to clean storage cabinets which may be in enclosed cabinets in the procedure rooms. Clean equipment spaces, including storage, must protect equipment from contamination. The following space and equipment shall also be included:

(a) If scopes are cleaned by hand, two separate utility sinks, arranged to prevent splash from one to the other, one for clean and one for soiled equipment processing;

(b) A separate hand washing sink;

(c) Space and facilities for the disposal of waste materials;

(d) When automatic endoscope cleaners and sonic processors are used, space and plumbing fixtures for this equipment shall be provided;

(e) Ventilation system: Negative air pressure and exhaust air from the room per Table 2, OAR 333-535-0300, shall be maintained. A hood is recommended for off-gassing and sterilants which cause respiratory irritation; and

(f) Outlets for vacuum and compressed air shall be provided in accordance with OAR 333-535-0300, Table 5.

(3) Patient Holding and Recovery Area (if not shared with surgical recovery). The following shall be provided:

(a) Each patient cubicle shall allow a minimum 3 feet between stretchers or recovery chairs;

(b) Each patient cubicle shall be equipped with oxygen and vacuum outlets in accordance with Table 5, OAR 333-535-0300;

(c) Provisions for respiratory isolation shall be provided if bronchoscopy patients are also served in patient cubicles;

(d) Medication preparation and storage with hand washing facilities;

(e) Toilet facilities;

(f) Change areas and secure storage for patients' personal property. Patient recovery cubicles may be used when scheduling and capacity allows;

(g) Nurses' reception and charting area which allows for visual observation of patients;

(h) Storage provisions for clean supplies;

(i) A dedicated janitor/housekeeping closet;

(j) A nurse call system or other workable system which allows for summoning staff assistance; and

(k) A soiled utility or soiled holding room shall be located to serve the endoscopy facility.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 441 & 442

Stats. Implemented: ORS 441 & 442

Hist.: OHD 2-2000, f. & cert. ef. 2-15-00; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05

333-535-0120

Obstetrical Facilities

The maternity unit shall consist of, but not be limited to, facilities as follows for exclusive use of the maternity department, unless otherwise noted:

(1) General:

(a) The maternity unit shall be located in one area of the hospital and include delivery rooms, labor rooms, labor, delivery, recovery and postpartum (LDRP) rooms, postpartum rooms, recovery rooms, and the support features described in this section to support the estimated obstetrical workload;

(b) The obstetrical care unit shall be located and arranged to prohibit non-related traffic through the unit;

(c) When delivery and non-obstetrical operating rooms are part of the same suite, access and service arrangements shall be such that neither staff nor patients need to travel through one area to reach the other;

(d) At least one delivery room shall be provided within the obstetrical unit for performing Caesarean sections and complex deliveries except for hospital-based obstetrical centers limited to less than 300 low-risk deliveries per year. In such centers, mothers requiring emergency Caesarean sec-

tions and complex deliveries may be transferred to surgery, provided a clean operating room can normally be made available, and infants can be transported back to the obstetrical unit in a controlled transport environment such as an isolette;

(e) When the program indicates wide usage of LDRP rooms in place of separate labor, delivery and postpartum rooms, the number of labor and postpartum rooms may be reduced or eliminated in accord with the hospital's obstetrical program and workload. Delivery rooms shall be provided per subsection (d) of this section; and

(f) Service areas may be arranged to serve both LDRP rooms and delivery rooms. However, gowning facilities, clean supply, soiled workrooms, and anesthesia facilities must be arranged to conveniently serve delivery rooms used for Caesarean sections and allow for a sterile operating suite environment. When such support areas are not immediately adjacent, the program and infection control policy must be submitted for Department of Human Services, Health Services approval and shall account for such arrangement.

(2) The following patient care facilities shall be provided in accord with section (1) of this rule for exclusive use of the maternity department, unless otherwise noted:

(a) Postpartum patient rooms must meet the same rules as medical and surgical patient rooms under OAR 333-535-0025(1);

(b) Each delivery room shall have a minimum clear area of 300 square feet exclusive of fixed cabinets and built-in shelves. Delivery rooms that are routinely used for Caesarean sections shall have not less than 360 square feet of clear area. An emergency communications system that can be activated without use of hands shall be connected with the obstetrical suite control station. Resuscitation facilities (electrical outlets, oxygen, suction, and compressed air) shall be provided for newborn infants within each delivery room in addition to the facilities required for the mother;

(c) Labor, Deliver, Recovery and Postpartum Rooms. LDRP rooms, when provided, shall be entered from a corridor within the maternity department where public access is under direct control of maternity staff and include the following features:

(A) Each room shall be for single occupancy and provide for a minimum of five feet of clear space at the sides and foot of the bed during delivery procedures. Additional space shall be provided for relatives and significant others, a chair for mothers who are breastfeeding, and an infant crib-bette;

(B) Mechanical and electrical services for LDRP rooms shall meet applicable requirements stated in OAR 333-535-0300 and 333-535-0310; and

(C) Each room shall contain or be closely served by each of the following:

(i) Enclosed storage cabinets or space for a covered cart for supplies used in normal spontaneous vaginal delivery and the immediate care of a normal newborn, unless the program indicates centralized storage and distribution from a nearby clean supply room;

(ii) Storage space for equipment utilized in medical emergencies for mother and infant;

(iii) A hand washing lavatory or scrub sink equipped with a wrist blade fitting or equivalent fitting allowing operation without use of the hands;

(iv) Toilet facility and shower;

(v) A window is required in each patient room as noted in OAR 333-535-0025;

(vi) Storage space for clothing, toilet articles, and other personal belongings of the patient;

(vii) An electrically operated nurses' calling system as specified under electrical requirements of this division; and

(viii) Examination lighting shall be provided but may be built-in or portable.

(d) Labor rooms. When provided, these rooms shall be single-bed or two-bed rooms with a minimum clear area of 100 square feet per bed. In facilities having only one delivery room, two or more labor rooms or LDRP rooms shall also be provided. When two labor rooms only are utilized in connection with a single delivery room, one labor room shall be large enough to function as an emergency delivery room with a minimum of 160 square feet and have at least two oxygen and two suction outlets. Each labor room shall contain a lavatory equipped for hand washing and shall have direct access to a toilet room. One toilet room may serve two labor rooms. Labor rooms shall be closely served by facilities for medication, charting, and storage for supplies and equipment. At least one shower for use of labor room patients shall be provided. A water closet shall be accessible to show-

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er facility. Windows, if provided, shall be located, draped or otherwise arranged, to preserve patient privacy from observation from outside; and

(e) Recovery room. It shall contain not less than two beds, charting facilities located to permit staff to have visual control of all beds, facilities for medicine dispensing, hand washing facilities, clinical sink with bedpan flushing device, and storage for supplies and equipment. The recovery room may be omitted in hospitals with fewer than 1,500 annual births.

(3) Service Areas. Individual rooms shall be provided as indicated in the following standards. Otherwise, alcoves or other open spaces which do not interfere with traffic may be used. Services, except the father's waiting room mentioned in subsection (c) of this section, soiled workroom in subsection (g) of this section, and the janitors' closet in subsection (p) of this section, may be shared with the surgical facilities if the functional program reflects this concept. Where shared, areas shall be arranged to avoid direct traffic between the delivery and operating rooms. The following services shall be provided:

(a) Control station located to permit visual surveillance of all traffic which enters the obstetrical suite;

(b) Supervisor's office or station;

(c) Fathers' waiting room located convenient to the labor room area with provisions for personal communication between fathers and staff. Toilets, telephones, and drinking fountains shall be convenient to the waiting room. In hospitals with less than 300 deliveries per year, a separate fathers' waiting room is not required when a general purpose waiting area can be made available;

(d) Sterilizing facility(ies) with high speed autoclave(s) conveniently located to serve all delivery rooms. When a written program indicates that adequate provisions have been made for replacement of sterile instruments during a delivery, sterilizing facilities in the obstetrical suite will not be required;

(e) Drug distribution station. Provision shall be made for storage, preparation, and dispensing of medication;

(f) Scrub facilities. Two scrub stations shall be provided near the entrance to each delivery room; however, two scrub stations may serve two delivery rooms if the scrub stations are located adjacent to the entrance of each delivery room. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts;

(g) An enclosed soiled workroom for the exclusive use of the obstetrical suite staff or a soiled holding room that is part of a system for the collection and disposal of soiled materials. The soiled workroom shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle, and linen receptacle. If a soiled holding room is used, the hand wash facility and work counter may be omitted. Soiled work and/or storage areas shall not have a direct connection with delivery rooms or other sterile activities;

(h) Fluid waste disposal facilities shall be provided in a location convenient to but not connected with the delivery rooms. (The clinical sink or equivalent equipment in a soiled workroom or soiled holding room would meet this standard.);

(i) Clean workroom(s) or clean supply room(s). A clean workroom is required when clean materials are assembled within the obstetrical suite prior to use. A clean workroom shall contain a work counter, sink equipped for hand washing, and space for clean and sterile supplies. A clean supply room shall be provided when the program defines a system for the storage and distribution of clean and sterile supplies which would not require the use of a clean workroom. When clean supplies and equipment used in LDRP rooms are kept in a central location, the room shall be sized to reflect this concept. (A clean workroom or supply room may be shared with surgery department when provisions for joint use are included in the hospital's infection control policy and arrangement allows direct access to both delivery and surgery suites.);

(j) Anesthesia storage facilities. Unless the narrative program and official hospital board action in writing prohibit use of flammable anesthetics, a separate room shall be provided for storage of flammable gases in accordance with the requirements detailed under the mechanical section of these rules (OAR 333-535-0300). (Anesthesia storage facilities may also serve the surgery suite when provision is made for direct access from both surgery and delivery suites.);

(k) Anesthesia workroom or space for cleaning, testing, and storing anesthesia equipment. It shall contain a work counter, sink, and provisions for separation of clean and soiled items. This may occur at a location outside the suite, provided that sufficient clean equipment and supplies are available at all times. The anesthesia workroom may be omitted when a narrative statement and hospital board policy are submitted stating that no anesthetics are utilized;

(l) Equipment storage room(s) for equipment and supplies used in obstetrical suite;

(m) Staff's clothing change areas. Appropriate areas shall be provided for male and female personnel (technicians, nurses, aides, and doctors) working within the obstetrical suite. The areas shall contain lockers, showers, toilets, lavatories equipped for hand washing, and space for donning scrub apparel. A receptacle for discarding soiled surgical gowns and boots shall be located to minimize contact with clean personnel. (The same clothes change areas may serve the surgery suite when provision for joint use is included in the hospital's infection control policy and arrangement allows for direct access from both surgery and delivery suites.);

(n) Lounge and toilet facilities for obstetrical staff convenient to delivery, labor, recovery, and LDRP rooms. A separate lounge may be omitted, however, in hospitals with less than 300 deliveries per year;

(o) Facilities for physician waiting, charting, and sleeping are recommended where the obstetrical staffing program and workload indicate need for such, but are not required;

(p) Janitors' closet. A dedicated closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided exclusively for the obstetrical suite; and

(q) Stretcher storage area. This area shall be out of direct line of traffic.

Stat. Auth.: ORS 441 & 442

Stats. Implemented: ORS 441 & 442

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(12); HD 21-1987, f. & ef. 11-13-87; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0260; HD 21-1993, f. & cert. ef. 10-28-93; OH 1-2002, f. & cert. ef. 2-28-02; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05

333-535-0260

Sanitary Environment

(1) A hand washing station is an area providing a sink for hand washing with hot and cold water supply and a faucet that facilitates easy on and off mixing capabilities without use of the hands. The station shall include provision of cleansing agents and drying capability. In addition to hand washing stations required for individual departments, adequate hand washing stations shall be provided for the total hospital population. Hand washing stations shall be available in all toilet rooms.

(2) Toilet and hand washing stations shall be available to patient care units as follows, with the exception of intensive patient care units and special locked psychiatric units where provision of these fixtures within the room may pose undue risks or problems:

(a) In newly constructed single patient rooms having a private toilet room, a hand washing station in both the toilet room and the patient room shall be provided. For renovation projects involving single patient rooms which have a private toilet room, a hand washing station shall be located in either the toilet room or the patient room.

(b) In single patient rooms having a toilet room connecting two rooms, a hand washing station shall be provided in the toilet room and in each of the two patient rooms.

(c) All wards of two or more beds, having a separate or connecting toilet rooms shall have a hand washing station in the toilet room as well as in the ward.

(d) A toilet room shall be directly accessible from each patient room without going through the general corridor.

(e) One toilet room shall serve not more than four patients or two patient rooms.

(f) In general psychiatric units, the hand washing station may be omitted from the patient room when a hand washing station is located in an adjoining toilet room. Toilet and hand washing station facilities in special-care, locked psychiatric units may be provided based on patients needs.

(3) Toilet rooms, conveniently located and separate from those used by patients, shall be provided for all hospital personnel. No toilet room shall open directly into any room in which food, drink, or utensils are handled or stored.

(4) Each patient care unit shall include or have direct access to a clean utility room or area open to the corridor containing a work counter, hand washing station and facilities for storage and distribution of clean and sterile supply materials. If the room is used for clean storage only, the hand wash sink may be omitted. If the utility area is open to the corridor, all supply cabinets shall be fully enclosed.

(5) Each patient care unit shall include or have direct access to a soiled utility room containing a clinical sink or equivalent flushing rim sink. Where a bed pan flushing device is provided in patient toilet rooms, a utility sink may be provided in the soiled utility room instead of a clinical sink. The utility sink shall be at least 10" deep and measure at least 22" by

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21". Each soiled utility room shall also provide a hand washing station, work counter, waste receptacle and linen receptacle for collection and disposal of soiled materials, including separate infectious waste storage if not provided elsewhere, and recycle storage if part of hospital operations.

(6) Patients' bathing facilities for medical, surgical, obstetrical, and pediatric patient care units: at least one shower or tub for each 15 beds shall be provided, except that in postpartum units, a minimum of one shower per 15 beds shall be provided. Each tub or shower shall be in an individual room or enclosure which provides space for the private use of the bathing fixture and for drying and dressing. At least one bathing fixture on each patient floor shall have space for a wheelchair with an assisting attendant. In new construction, at least one toilet for each 15 beds shall be provided in the bathing room.

(7) Janitor closets. In addition to closets noted in other sections of these rules, sufficient janitorial closets, with a floor sink or service sink located in each, shall be provided to serve all areas of the hospital. If practical, a hand washing station shall be provided in close proximity to the janitor closet.

Stat. Auth.: ORS 441 & 442
Stats. Implemented: ORS 441 & 442
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(27); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0335; HD 21-1993, f. & cert. ef. 10-28-93; OHD 1-2002, f. & cert. ef. 2-28-02; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05

333-535-0270

Details and Finishes

(1) The nonconforming portions of existing facilities which are not being totally modernized shall comply with the safety requirements dealing with interior finishes as listed in Chapters 18 and 19 of the National Fire Protection Association (NFPA) 101, 2000 Edition.

(2) Details and finishes in new construction projects, including additions and alterations, shall comply with the following:

(a) Details:

(A) Compartmentation, exits, fire alarms, automatic extinguishing system, and other details relating to fire prevention and fire protection shall comply with requirements listed in Chapters 18 and 19 of the NFPA 101, 2000 Edition.

(B) Items such as drinking fountains, telephone booths, vending machine, and portable equipment shall be located so as not to restrict corridor traffic or reduce the corridor width below the required minimum.

(C) Rooms containing any of the following: bathtubs, sitz baths, showers, or water closets, subject to occupancy by patients, shall be equipped with doors and hardware which will permit access from the outside in any emergency. When such rooms have only one opening, the door shall be capable of opening outward or be otherwise designed to be opened without need to push against a patient who may have collapsed within the room.

(D) If psychiatric care units are required by the program, suitable hardware shall be provided on doors to patient toilet rooms so that access to these rooms can be controlled by staff.

(E) If required by the program, doors to patient rooms in psychiatric care units shall not be lockable from inside the room.

(F) Windows and other doors which may be frequently left in an open position shall be provided with insect screens.

(G) Patient rooms intended for occupancy of 24 hours or more shall have windows with sills not more than 36" above the floor (windows in Intensive Care Unit and Critical Care Unit may be 60" above the floor).

(H) Linen and refuse chutes shall meet requirements of NFPA 101, 2000 Edition and have a minimum cross sectional dimension of not less than 2'0".

(I) Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use of wheelchairs and carts. Expansion joints shall be constructed to restrict passage of smoke and fire.

(J) Grab bars shall be provided at all patients' toilets, showers, tubs, and sitz baths, except in psychiatric patient care units. The bars shall have 1 1/2-inch clearance to walls and shall have sufficient strength and anchorage to sustain a concentrated load of 250 pounds.

(K) Recessed soap dishes or surface mounted corner mounted units shall be provided at showers and bathtubs.

(L) Mirrors shall not be installed at hand washing fixtures in food preparation areas or in sensitive areas such as nurseries, clean and sterile utility, storage rooms and scrub sinks.

(M) Provision for hand drying shall be included at all hand washing facilities except scrub sinks. These shall be single use separate individual paper or cloth units enclosed in such a way as to provide protection against dust or soil and insure single unit dispensing. Hot air dryers are permitted

provided that installation is such to preclude possible contamination by recirculation of air.

(N) Radiation protection requirements of X-ray and gamma ray installations shall conform with National Council of Radiation Protection Reports Numbers 33 and 49. Provision shall be made for testing the completed installation before use and all defects must be corrected before acceptance. Prior to their use, all installations shall be approved and licensed by the Radiation Control Section of the Department of Human Services, Health Services.

(O) The minimum ceiling height shall be 8'0" with the following exceptions:

(i) Boiler rooms shall have ceiling clearances not less than 2'6" above the main boiler header and connecting piping.

(ii) Radiographic, operating and delivery rooms, and other rooms containing ceiling-mounted equipment or ceiling-mounted surgical light fixtures shall have height required to accommodate the equipment or fixtures.

(iii) Ceilings in corridors, storage, toilet rooms, and other minor rooms shall be not less than 7'6".

(iv) Soffits, signage, lights, mechanical items and other suspended items located in the path of normal traffic shall not be less than 7'0" above the floor. Cubicle curtain tracks and television suspensions in individual rooms shall not be less than 6'8" above the floor.

(P) Recreation rooms, exercise rooms and similar space where impact noises may be generated shall not be located directly over patient bed area, delivery or operating suites, unless special provisions are made to minimize such noise.

(Q) Rooms containing heat-producing equipment (such as boiler or heater rooms and laundries) shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature of 10°F above the ambient room temperature of the room producing the heat generation.

(R) Sound transmission criteria shown in Table 1 (OAR 333-535-0300) shall apply to partition, floor and ceiling construction in patient areas.

(S) Equipment and supply storage shall be provided for each hospital department in accordance with the functional program; however, a minimum of 10 square feet per bed shall be provided in patient care areas. In all other departments, the amount required shall be based on either a study of supply and equipment needs which shall be submitted with construction plans for review or a minimum of 10% of gross departmental area. All rooms and corridors within a department shall be included when calculating gross departmental area.

(b) Finishes:

(A) Cubicle curtains and draperies shall be noncombustible or rendered flame retardant and shall pass both the large and small scale tests of NFPA Standard 701.

(B) Flame spread and smoke developed ratings of finishes are covered under the State of Oregon Building Code. Whenever possible, the use of materials known to produce large amounts of noxious gases shall be avoided.

(C) Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. Floors in areas used for food preparation or food assembly shall be water-resistant and grease-proof. Joints in tile and similar material in such areas shall be resistant to food acids. In all areas frequently subject to wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet (such as shower and bath areas, kitchens, operating and "C" section rooms, clean core areas, recovery areas except step-down recovery and similar work areas) shall have a non-slip surface.

(D) Wall bases in kitchens, operating and "C" Section rooms, clean core areas, surgical scrub corridors, soiled workrooms, endoscopy rooms, janitors' closets and other areas which are frequently subject to wet cleaning methods shall be made integral and covered with the floor, tightly sealed within the wall, and constructed without voids that can harbor insects.

(E) Wall finishes shall be washable and, in the immediate area of plumbing fixtures, shall be smooth and moisture resistant (orange peel not allowed). Finish, trim, and floor and wall construction in dietary and food preparation areas shall be free from spaces that can harbor rodents and insects.

(F) Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(G) Ceilings in surgery rooms, delivery, nursery's, clean core areas and radiographic dark rooms shall be constructed with solid material, such as gypsum board and be without crevices that can contain dirt particles.

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These sensitive areas along with the dietary and food preparation areas shall have a finished ceiling covering all overhead duct work and piping. Finished ceilings may be omitted in general storage areas, and similar spaces, unless required for fire-resistive purposes.

(H) Acoustical ceilings shall be provided for corridors in patient areas, nurses' stations, labor rooms, day rooms, recreation rooms, dining areas, and waiting areas.

(I) Ceilings of patient rooms in psychiatric care units shall be of monolithic or bonded construction. (See Table 1, OAR 333-535-0300.)

(J) Top-set rubber or vinyl wall base, where used, shall be sealed tightly to the floor as well as to the wall.

[ED. NOTE: Tables referenced are available from the agency.]

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

Stat. Auth.: ORS 441 & 442

Stats. Implemented: ORS 441 & 442

Hist.: HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(28); HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0340; HD 21-1993, f. & cert. ef. 10-28-93; OHD 2-2000, f. & cert. ef. 2-15-00; OHD 1-2002, f. & cert. ef. 2-28-02; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05

333-535-0300

Mechanical Requirements

(1) General standards:

(a) In addition to requirements of this rule, the mechanical system serving hospitals and hospital outpatient facilities may be subject to general review for overall efficiency and life cycle cost, although no requirements will be enforced beyond those included in this rule. Recognized engineering procedures are recommended to achieve specific requirements and performance for the most economical and effective results. Different geographic areas may have climate variations and use conditions that would favor one system over another in terms of overall cost and efficiency. Exceptions to energy conservation related standards of this division may be made for renovation projects in which existing equipment is utilized and conformance would be impractical or costly to accomplish. New construction shall comply, where feasible, with Chapter 13 Energy Conservation of the Oregon Structural Specialty Code, as enforced by the state Building Codes Division and local jurisdictions having authority. Also refer to National Fire Protection Association (NFPA) 99 Hospital Requirements and other Health Care Facilities Chapters for applicable NFPA 99 requirements. In no case, shall patient care or safety be sacrificed for conservation.

(b) Remodeling and work in existing facilities may present special problems. To the extent practical and as permitted by available funds, existing insulation, weatherstripping, etc., shall be brought up to standards for maximum economic benefit and efficiency. Consideration shall be given to inclusion of additional work that may be needed for these purposes.

(c) Facility design shall include consideration of site, building mass, orientation, configuration, fenestration, and other features relative to any passive and active energy systems utilized.

(d) To the extent practical, the facility shall include provisions for recovery of waste cooling and heating energy (ventilation, exhaust, water and steam discharge, cooling towers, incinerators, etc.).

(e) To reduce utility costs, facility design shall include consideration of recognized procedures such as variable air volume systems, energy recovery devices, "load shedding," programmed controls for unoccupied periods including nights and weekends, and use of natural ventilation where site and climatic conditions permit. Systems with excessive operational and/or maintenance costs that would negate long-range energy savings should be avoided.

(f) Controls for air handling systems shall be designed with economizer cycle where appropriate to use outside air for required cooling and/or heating. (Use of mechanically circulated outside air does not reduce need for filtration.)

(g) To the extent possible, this rule has been written to permit maximum use of simplified systems including that for variable air volume (VAV). However, care must be taken in design to avoid possibility of large temperature differentials, high velocity supply, excessive noise and stagnation. Air supply, return and exhaust in rooms may vary in response to room load provided the total and outside air change rates stay within the limits of Table 2, Note 4. Refer to Construction Project Guidelines for submission requirements to indicate the actual air change rates provided in the areas listed in Table 2. To maintain asepsis control, air supply, return, and exhaust quantities should generally be controlled to insure movement from "clean" to "less clean" areas and maintain directional air movement within the limits of Table 2, Note 2. Special considerations shall be given to "sterile" areas such as Operating and Delivery Rooms and Central Supply. Variable air volume systems must include controls and/or equipment necessary to insure that minimum outside air quantities in cubic feet per minute, and the

resulting space pressure relationships are maintained over the range of fan operation. Examples of methods to assure the delivery of minimum quantities of outside air include the installation of airflow monitoring stations or dedicated supply fans.

(h) Prior to acceptance of the facility, all mechanical systems shall be tested, balanced and operated to demonstrate to the design engineer or his or her representative that the installation and performance of these systems conform to the design intent. Test results shall be documented for maintenance files and be available for inspection by Department of Human Services, Health Services surveyors or building officials having jurisdiction.

(i) Upon completion of the contract, the owner shall be furnished and retain on file a complete set of manufacturers' operating, maintenance and preventive maintenance instructions, parts lists and procurement information with numbers, and a description for each piece of equipment. Responsible operating staff persons shall also be provided with instructions in the proper operational use of systems, equipment, and controls. Required information shall include energy ratings as may be needed for future conservation calculations. This information shall be available for inspection by Department of Human Services, Health Services surveyors or building officials having jurisdiction.

(j) As an aid to project sponsors, references are made throughout this rule to sections of the Oregon Structural Specialty Code, Oregon State Plumbing Specialty Code, and the Oregon Mechanical Specialty Code as enforced by the state Building Codes Division and local jurisdictions having authority. Responsibility for enforcement remains with these authorities.

(2) Thermal and acoustical insulation:

(a) Insulation within the building shall be provided for the following:

(A) Boilers, smoke breaching, and stacks;

(B) Steam supply. Condensate return piping, and hot water heating supply and return piping (also refer to Table 13E (Minimum Pipe Insulation of the Oregon Structural Specialty Code);

(C) Domestic hot water piping and hot water heaters, generators, and converters (also refer to the Oregon State Plumbing Specialty Code, OAR 918-705-0110);

(D) Chilled water, refrigerant, and other process piping and equipment operating with fluid temperatures below ambient dew point (also refer to the Oregon Structural Specialty Code, Table 13E Minimum Pipe Insulation);

(E) Domestic water supply and drainage piping on which condensation may occur;

(F) Heating and cooling ducts with interior temperatures 10°F (4°C) above or below the ambient dry bulb temperature of adjacent areas (also refer to the Oregon Structural Specialty Code, Table 13H — Minimum Duct Insulation);

(G) Air ducts and casings with outside surface temperatures below ambient dew point or above 80°F (27°C); and

(H) Other piping, ducts, and equipment as necessary to maintain the efficiency of the system.

(b) Insulation on cold surfaces shall include an exterior vapor barrier. (Material which will not absorb or transmit moisture will not require a separate vapor barrier.)

(c) Insulation, including finishes and adhesives on the exterior surfaces of ducts, piping, and equipment, shall have a flame spread rating of 25 or less and a smoke developed rating not to exceed 50 when tested in accordance with NFPA 255. This includes mechanical refrigeration and distribution equipment and hot water distribution equipment such as valves, pumps, chiller, etc.

(d) Use of duct linings is generally discouraged as they result in greater energy costs by increasing system pressure drops. Moreover, remodeling of lined duct systems will destroy the integrity of the liner sealant. However, if linings are employed in non-sensitive hospital areas, they shall meet the Erosion Test Method described in Underwriters' Laboratories, Inc., Publication No. 181. These linings, including coatings, adhesives, and insulation on exterior surfaces of pipes and ducts in building spaces, shall have a flame spread rating of 25 or less and a smoke developed rating of 50 or less as determined by an independent testing laboratory in accordance with NFPA 255.

(e) No duct linings exposed to air movement shall be used in ducts, terminal boxes or other systems downstream of final filters supplying operating rooms, invasive special procedure rooms, delivery and C-section rooms, postanesthesia recovery rooms, critical care, nurseries, protective isolation rooms, intensive care and central supply units, except fully encapsulated lining may be used in terminal boxes. Sound traps or duct silencers downstream of final filters in these systems shall be all metal with no fill.

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(f) Existing accessible friable insulation within affected areas of facilities to be modernized shall be inspected, repaired and/or replaced as appropriate.

(3) Steam and hot water systems:

(a) Boilers and domestic water heaters. Boilers shall have the capacity, based upon the net ratings published by the Hydronics Institute to supply the normal requirements of all systems and equipment. Their number and arrangement shall accommodate facility need during time of breakdown or routine maintenance of any one boiler. The capacity of the remaining boiler(s) shall be sufficient to provide domestic hot water service for clinical, dietary, and patient use; steam for sterilization and dietary purposes; and heating for operating, delivery, labor, recovery, intensive care, nursery, and general patient rooms. If the domestic water heating system is independent of the building boilers, the domestic water heating system shall be capable of providing a back-up source of domestic hot water for clinical, dietary, and sterilizer use when the primary domestic water heating system is not operable. These requirements apply to all ambulatory surgical care facilities with sterilizer needs and all inpatient care facilities.

(b) Boiler accessories. Boiler feed pumps, heating circulating pumps, condensate return pumps, and fuel oil pumps shall be connected and installed to provide normal and standby service where back-up or standby service is required.

(c) Valves. Supply and return mains and risers of cooling, heating and steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends except that vacuum condensate returns need not be valved at each piece of equipment.

(d) Fuel supplies. Fuel used for boiler systems that provide building heating for other areas listed in Section (3)(a) shall be stored on site.

(4) Air conditioning, heating, and ventilating systems:

(a) The ventilation system shall be designed and balanced to provide ventilation rates and directional flow as shown in Table 2. (See notes 2 and 4 for reduction and shutdown of ventilation systems when room is unoccupied.) The ventilation rates shown in Table 2 shall be used only as model standards; they do not preclude the use of higher rates that may be appropriate. All occupiable rooms and areas in the facility shall have provision for mechanical ventilation. While natural window ventilation for nonsensitive areas and patient rooms may be utilized to supplement mechanical ventilation when weather permits, availability of mechanical ventilation in accord with Table 2 will be necessary during periods of temperature extremes. Freestanding Immediate Care Clinics, Physician's Clinics, Imaging Facilities, Outpatient Physical Therapy, and Occupational Therapy Facilities that are not part of an inpatient facility are not required to meet the ventilation requirements of Table 2, except endoscopy, isolation, and bronchoscopy areas.

(b) Fresh air intakes shall be located at least 25'0" from exhaust outlets of ventilating systems, combustion equipment stacks, medical-surgical vacuum systems, plumbing vents, cooling towers, or from areas which may collect vehicular exhaust or other noxious fumes in inpatient areas and outpatient areas providing invasive or anesthetizing procedures. In non-anesthetizing hospital outpatient facilities, this distance may be reduced to 10 feet. (Prevailing winds and/or proximity to other structures may require greater clearances.) Plumbing and vacuum vents that terminate above the level of the top of the air intake may be located as close as 10'0". The bottom of outdoor air intakes in inpatient facilities shall be located as high as practical but at least 6'0" above ground level, or if installed above the roof, 3'0" above the roof level.

(c) Fans serving exhaust systems shall be located at the discharge end and shall be conveniently accessible for service. Hospital outpatient facilities are not required to have exhaust fans at the discharge end of the system except endoscopy, isolation, and bronchoscopy area. Exhaust fans not located at the discharge end of the system shall be rated for continuous use (20,000 hours) and the ductwork between the fan and the discharge shall be sealed with a sealant system. Exhaust systems may be combined as necessary for efficient use of recovery devices required for energy conservation. Exhaust systems from areas that may be contaminated shall include fans located outside the building with outlets extended a minimum of six feet with exhaust discharging upward above the roof level and arranged to minimize recirculation of exhaust air into the building. Alternate systems that are designed to limit cross contamination and exposure to workers and patients may be considered. (Also refer to the Oregon Mechanical Specialty Code, for additional requirements.)

(d) Operating and delivery rooms air supply shall be from ceiling outlets near the center of the work area to effectively control air movement with laminar flow design diffusers used in operating rooms. Return air shall

be from near the floor level. Each operating and delivery room shall have at least two return air inlets located as remotely from each other as practical. (Design should consider turbulence and other factors of air movement to minimize fall of particles into wound site.) Where extraordinary procedures, such as organ transplants, may justify other special designs, the installation shall be as required to properly meet the performance needs. These special designs will be reviewed on a case by case basis. Installation of equipment requiring service shall be kept to a minimum above operating rooms and sterile core areas. Humidity control and smoke vent systems in anesthetizing areas must be provided as required by NFPA 99, Environmental Systems Chapter.

(e) Air supply for intensive care nurseries, airborne infectious isolation rooms and rooms used for invasive procedures shall be at or near the ceiling. Return air inlets shall be near the floor level.

(f) Each space routinely used for administering inhalation anesthesia shall be provided with a scavenging system to vent waste gases. If a vacuum system is used, the gas collecting system shall be arranged so that it does not interfere with the patient's respiratory system. Gases from the scavenging system shall be exhausted directly to the outside. The anesthesia evacuation system may be combined with the room exhaust system provided that the part used for anesthesia gas scavenging exhausts directly to the outside and is not part of the recirculation system. Separate scavenging systems are not required for areas where gases are used only occasionally such as the emergency room, offices for routine dental work, labor, delivery and recovery rooms etc. Acceptable levels of concentration of anesthetizing agents are not fully known at this time. In the absence of specific figures, any scavenging systems should be designed to remove as much of the gases as possible from the room equipment. While not within the scope of this rule, it is assumed that anesthetizing equipment will be selected and maintained to minimize leakage and contamination of room air.

(g) The bottoms of ventilation (supply/return) openings shall be at least 3 inches above the floor.

(h) Emergency waiting rooms and other waiting rooms where airborne infection is a concern as defined by the Infection Control Risk Assessment, shall have low wall returns and shall conform to the requirements of Table 2.

(i) Air plenums shall not be used except there may be return air plenums serving non-sensitive areas only.

(j) All ventilation or air conditioning systems, except individual room units, shall be equipped with filters having efficiencies equal to, or greater than, those specified in Table 3. Where two filter beds are required, filter bed No. 1 shall be located upstream of the air conditioning equipment, and filter bed No. 2 shall be downstream of any cooling coils, water reservoir type humidifiers, and blowers.

(A) Where only one filter bed is required, it shall be located upstream of the air conditioning equipment unless an additional pre-filter is employed. In this case, the pre-filter shall be upstream of the equipment, and the main filter may be located further downstream.

(B) Filter efficiencies shall be average efficiencies tested in accordance with American Society of Heating & Air Conditioning Engineering Standard 52.2 except as noted otherwise.

(C) Filter frames shall be durable and dimensioned to provide an airtight fit with the enclosing ductwork. All joints between filter segments and the enclosing ductwork shall be gasketed or sealed to provide a positive seal against air leakage.

(D) A manometer shall be installed across each filter bed having a required efficiency of 75 percent or more including hoods requiring HEPA filters. If high efficiency filters are located remote from the air handling unit, monitoring of filter condition is required in a staffed area.

(k) Water spray humidifiers shall not be used. Humidifiers shall not be located to allow moisture on filters.

(l) Air handling duct systems shall meet the requirements of NFPA Standard 90A, and those contained in this rule. (Also refer to the Oregon Mechanical Specialty Code, Duct Systems Chapter 6, for additional requirements.)

(m) Ducts which penetrate construction intended for X-ray or other ray protection shall not impair the effectiveness of the protection.

(n) Fire and smoke dampers shall be constructed, located and installed in accordance with the requirements of NFPA Standards 90A, 101, and the Oregon Structural Specialty and Fire and Life Safety Codes. Fans, smoke dampers, and detectors shall be interconnected so that activation of dampers will not damage the ducts. Access for maintenance shall be provided at all dampers. All damper locations must be shown on drawings. When smoke partitions are required, zones for Heating Ventilation and Air

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Conditioning shall be coordinated with compartmentation insofar as practical to minimize need to penetrate fire and smoke partitions.

(o) Systems shall be provided to exhaust chemicals and fumes that cause respiratory irritation or other hazards to workers, including laboratory processes, instrument processing rooms, radioactive processes. If the air change standards in Table 2 do not provide sufficient air for use by hoods and safety cabinets, makeup air shall be provided to maintain the required air flow direction and to avoid depending upon infiltration from outdoor or from contaminated areas. The food preparation area may have air movement "in" during cooking, and hood operation for odor control. Makeup systems for hoods shall be arranged to minimize "short circuit" of air movement and to avoid reduction in air velocity at the point of contaminant capture.

(p) Laboratory hoods shall meet the following general standards:

(A) Have an average face velocity of at least 75 feet per minute or as required by the hood manufacturer, whichever is greater;

(B) Be connected to an exhaust system to the outside which is separate from the building exhaust system;

(C) Have an exhaust fan located at the discharge end of the system and outside the building;

(D) Have an exhaust duct system of noncombustible corrosion-resistant materials as needed to meet the planned usage of the hood; and

(E) Conform to of the Oregon Mechanical Specialty Code, Exhaust Chapter 5, as enforced by the state Building Codes Division and local authorities having jurisdiction.

(q) Laboratory hoods shall meet the following special standards:

(A) Each hood which processes highly infectious or radioactive materials shall: have a minimum face velocity of 100 feet per minute; shall be connected to an independent exhaust system; have filters with a 99.97 percent efficiency (based on the DOP, dioctylphthalate, test method) in the exhaust stream; and be designed and equipped to permit the safe removal, disposal and replacement of contaminated filters. Filters shall be as close to the hood as practical to minimize duct contamination. Hoods which process radioactive materials shall meet requirements of the Nuclear Regulatory Commission, and as a minimum, discharge at least 10 feet above the roof of the building. Radioactive isotopes used for injections, etc., without probability of airborne particulate or gases might be processed in a "clean work bench" type hood where acceptable to the Nuclear Regulatory Commission.

(B) Ducts serving hoods for radioactive material shall be constructed of acid resistant type stainless steel for their full length, with a minimum number of joints. Duct systems serving hoods in which strong oxidizing agents (e.g., perchloric acid) are used shall be constructed of acid resistant type stainless steel for at least 10'0" from the hood and shall be equipped with washdown facilities. Provisions shall be made for safe removal of filters during washdown operations.

(r) Exhaust hoods in food preparation centers shall comply with the Oregon Mechanical Specialty Code, Exhaust Systems Chapter 5, and NFPA 96. All hoods over cooking ranges shall be equipped with grease filters or extractors, fire extinguishing systems and heat-actuated fan controls. Clean-out openings shall be provided every 20'0" in horizontal exhaust duct systems serving these hoods. (Horizontal runs of ducts serving range hoods should be kept to a minimum.) Dedicated kitchen hood make-up air system intakes may be a minimum of ten feet from kitchen hood outlets.

(s) The ventilation system for anesthesia storage rooms shall conform to the requirements of NFPA 99 Health Care Facilities, including the gravity option. Mechanically operated air systems are optional in this room.

(t) The space that houses ethylene oxide (ETO) sterilizers must be provided with a dedicated local exhaust system with adequate capture velocity (i.e., with a minimum capture of 200 fpm) to exhaust over sterilizer door, exhaust at sterilizer drain and exhaust at the aerator and multiple load station. Atmospheric exhaust vent for safety valve shall be provided. Installation shall also conform to applicable standards of the sterilizer manufacturer. Testing of installations to standards of the State of Oregon Department of Insurance and Finance shall be made before routine use occurs. Such standards are provided in OAR chapter 437, division 2.

(u) Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates and to limit work station temperatures to no more than 15°F above the outside air temperature when outside air temperatures are above 85°F. (Also refer to Combustion Air Chapter 7 of the Oregon Mechanical Specialty Code for added requirements.

(v) Gravity exhaust may be used, where conditions permit, for non-patient areas such as boiler rooms, central storage, etc.

(5) Plumbing and other piping systems:

(a) All plumbing systems shall be designed and installed in accordance with the Oregon Plumbing Specialty Code as enforced by the state Building Codes Division and local authorities having jurisdiction.

(b) Plumbing fixtures:

(A) All fixtures used by medical and nursing staff and all lavatories used by patients and food handlers shall be trimmed with valves which can be operated without the use of hands (single lever devices may be used). Blade handles used for this purpose shall not exceed 4-1/2 inches in length. Standard fittings are allowable on lavatories in patient toilet rooms when a second lavatory is provided in the adjacent patient room(s).

(B) Clinical sinks shall have an integral trap in which the upper portion of a water trap provides visible seal.

(C) Showers and tubs shall have non-slip surfaces for patients.

(c) Potable water supply systems:

(A) Bedpan flushing devices (may be cold water) shall be provided in each inpatient toilet room, except that installation is optional in psychiatric, alcohol abuse, and other units where patients are primarily ambulatory.

(B) Water distribution systems shall be arranged to provide for continuous hot water at each hot water outlet. Piping runs out from recirculating hot water system mains to individual outlets shall not exceed 30 feet. Hot water for showers and bathing facilities shall be at appropriate temperatures for comfortable use but shall not exceed 49°C or 120°F (see Table 4).

(d) Hot water systems. The system for heating hot water shall have sufficient capacity to supply water at the temperatures and amounts indicated in Table 4. Water temperature is that taken at the point of use of inlet to the equipment. (Also refer to the Oregon Structural Specialty Code, Energy Conservation Chapter 13 for added requirements.)

(e) Drainage systems:

(A) Drain lines from sinks in which acid wastes may be poured shall be fabricated from acid-resistant material and must comply with the Oregon State Plumbing Specialty Code, Indirect & Special Waste, Chapter 8.

(B) Drain lines serving some types of automatic blood cell counters shall be of carefully selected material because of a possible undesirable chemical reaction (and/or potential for explosion) between sodiumazide in the waste and materials such as copper, lead, brass, and solder.

(C) Insofar as possible, drainage piping shall not be installed overhead whether within the ceiling or exposed, in operating and C-section rooms, pharmacy IV admixture clean rooms, intensive care nurseries, food storage areas, central sterile supply areas, and other sensitive areas. Where overhead drain piping is unavoidable in these areas, as may occur in existing facilities, special provisions shall be made to protect the space below from possible leakage, condensation or dust particles. If drain pans are installed for protection, the pans shall be drained to an open site, air-gap drain and shall be labeled.

(D) Floor drains shall not be installed in operating and delivery rooms. Flushing rim type drains may be used in cystoscopic rooms, except as prohibited by rules for surgical facilities under OAR 333-535-0110(3)(d).

(E) Building sewers shall discharge into a community sewage system. Where such a system is not available, the facility must treat its sewage in accordance with standards of the Oregon Department of Environmental Quality and local governmental agencies having jurisdiction.

(F) Grease traps for kitchens shall comply with requirements of the Oregon Plumbing Specialty Code.

(G) Where plaster traps are used, they shall meet standards of the Oregon Plumbing Specialty Code.

(H) Provide traps at hot lab sinks where radioactive materials are processed.

(f) Nonflammable medical gas and vacuum systems. The installation of non-flammable medical gas and vacuum systems shall comply with the requirements of NFPA 99 and the Uniform Fire Code. (See Table 5 for rooms which require station outlets).

(A) Test results certifying the medical gas and vacuum system testing required in NFPA 99 shall be documented for maintenance files and be available for inspection by Department surveyors or building officials having jurisdiction. The tests shall include both performance testing by the system installer and verification testing by an independent third party.

(B) When any existing medical gas or vacuum system is altered or augmented, all the new and existing components in the immediate zone or area located upstream and downstream of the altered section shall be tested and certified per NFPA 99 requirements.

(g) Medical vacuum systems. Cautionary comments of NFPA 99, Gas and Vacuum Systems Chapter, may be especially applicable when vacuum system is being considered for scavenging of anesthetizing gases.

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(h) Identification. All piping, including heating ventilation, gas, vacuum and air conditioning (HVAC) except control line tubing, shall be color coded or otherwise marked for easy identification. Major equipment shall be labeled. All valves shall be tagged. Color and valve schedules shall be provided to the facility for permanent record and reference.

[ED. NOTE: Tables referenced are available from the agency.]

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

Stat. Auth.: ORS 441 & 442

Stats. Implemented: ORS 441 & 442

Hist.: HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(31); HD 21-1987, f. & ef. 11-13-87 HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0355; HD 21-1993, f. & cert. ef. 10-28-93; OHD 2-2000, f. & cert. ef. 2-15-00; OHD 1-2002, f. & cert. ef. 2-28-02; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05

333-535-0310

Electrical Requirements for Hospitals Under New Construction and Alterations

(1) General:

(a) All material including equipment, conductors, controls, and signaling devices shall be installed in compliance with applicable sections of the National Electrical Code, National Fire Protection Association (NFPA) 70. Refer to NFPA 99 Hospital Requirements and other Health Care Facilities Chapters for applicable NFPA 99 requirements. All materials shall be listed as complying with state-approved established standards;

(b) The electrical installations, including, but not limited to, alarm, nurses' call, communication, and emergency generator systems shall be tested to demonstrate that equipment installation and operation is as intended and appropriate. A written record of performance tests of special electrical systems and equipment shall show compliance with applicable codes and standards. Grounding continuity shall be tested as described in NFPA 99;

(c) Plans or specifications for new facilities shall indicate the power factor used in the design of the electrical system;

(d) When remodels occur in hospitals in which emergency electrical services branches are not divided in accordance with NFPA 70 and 99, and less than 50 percent of an individual system is affected, the entire system is not required to be made to conform to these codes. Modifications, however, shall be done in a manner to minimize required work should the full system later be brought into conformance; and

(e) Upon completion of the electrical contract, the owner shall be furnished, and shall retain on file, a complete set of operating, maintenance, and preventative maintenance instructions, parts lists, and procurement information for all major electrical equipment and systems, including generators, switch gear, nurse call equipment, smoke detection equipment, and alarm systems.

(2) Switchboards, power panels, equipment and their installation shall comply with the National Electrical Code, NFPA 70. The main switchboard shall be located in an area separate from plumbing and mechanical equipment and be accessible only to authorized persons.

(3) Panelboards. Panelboards serving normal lighting and appliance and all critical care circuits shall be located on the same floor as the circuits they serve. Panelboards for life safety circuits may serve no more than one floor above and/or below, and the floor on which they are located.

(4) Lighting:

(a) Lighting shall conform to the recommended lighting standards for public buildings contained in the Oregon Structural Specialty Code. Bare bulb fixtures shall not be allowed;

(b) Approaches to buildings and parking lots shall have lighting at a minimum of one foot-candle to allow for the safe passage of pedestrians;

(c) Inpatients' rooms shall have general lighting and night lighting. A reading light shall be provided for each patient. Flexible light arms, if any, shall be mechanically controlled to prevent the bulb from coming in contact with bed linen. Overbed lights shall be designed or positioned to prevent damage from IV poles and traction devices when the head of the bed is raised. At least one light must be controllable from each bed. One or more night light fixtures in each inpatient room should be controlled at the room entrance. All light controls in patient areas shall be of the quiet operating type. Lighting for intensive care and newborn nursery bed and crib areas shall be designed or arranged to permit staff observation of patients, but minimize glare, i.e., no downlights over patient bed areas. At least one general illumination light in each inpatient room must be connected to the emergency power system, critical branch;

(d) Operating and delivery rooms shall have general lighting in addition to that provided by special lighting units at the surgical and obstetrical tables. Each fixed special lighting unit at the table shall be connected to an independent circuit. Portable units may share circuits; and

(e) Patient care unit corridors shall have general illumination with provisions for reduction of light level at night.

(5) Receptacles (Convenience Outlets):

(a) In pediatric units, psychiatric units, emergency department waiting areas, and outpatient waiting areas receptacles shall be hospital-grade safety grounding type;

(b) Anesthetizing locations. Each operating and delivery room shall have at least six duplex receptacles, each supplied by an individual circuit. Where mobile X-ray equipment requiring special electrical considerations is used, additional receptacles distinctively marked for X-ray use shall be provided. (See NFPA 70, for receptacle requirements when capacitive discharge or battery operated mobile X-ray units are used.);

(c) Patients' rooms. Each patient room shall have duplex grounding type receptacles as follows: One located on each side of the head of each bed, at least one of which shall be connected to the emergency electrical system critical branch; one for television, if used; and one on each other wall. Receptacles may be omitted from exterior walls where construction would make installation impractical. Normal newborn nurseries shall have at least one duplex grounded receptacle for each two bassinets. Special care nurseries shall have one duplex per bassinets. A minimum of one duplex outlet per each six bassinets in normal and special care nurseries shall be connected to the emergency electric system critical branch. Critical care areas, as defined in NFPA 70, and NFPA 99, including pediatric intensive care, shall have at least four duplex outlets at the head of each bed, crib, or bassinets, all of which shall be connected to the emergency electrical system critical branch. Additional outlets (which may be shared) shall be available so that each bed for critical care will have access to at least seven duplex outlets;

(d) Corridors. Duplex grounded receptacles for general use shall be installed approximately 50'0" apart in all corridors and within 25'0" of the ends of corridors. Receptacles in pediatric unit corridors shall be of the safety grounding type. At least one single polarized receptacle marked for use of X-ray only shall be installed in corridors of patient areas. If the same mobile X-ray unit is used in operating rooms and in nursing areas, receptacles for X-ray use shall permit the use of the same plug type in all locations. Where capacitive discharge or battery-powered X-ray units are used in lieu of the portable electrically powered type, separate polarized receptacles are not required; and

(e) Provide duplex outlets for emergency resuscitation carts, connected to the critical branch of the emergency system.

(6) Equipment Installation in Special Areas:

(a) Inhalation anesthetizing locations. All electrical equipment and devices, receptacles and wiring shall comply with applicable sections of NFPA 70 and 99;

(b) X-ray installation. Fixed and mobile X-ray equipment installations shall conform to 660 of NFPA 70;

(c) X-ray film illuminator unit or units to display at least two films simultaneously shall be installed in each operating room, emergency treatment room, and X-ray viewing room of the radiology department. All illuminator units within one space or room shall have lighting of uniform intensity and color value;

(d) Ground fault protection shall be provided as follows:

(A) Ground fault interrupters shall be installed in accordance with NFPA 70. In addition, individual 125 volt Ground Fault Circuit Interrupter receptacles shall be provided when located adjacent to any sink or within six feet of any shower or tub; and

(B) Ground Fault Circuit Interrupter protection shall be provided for all 15 or 20 amp., 125 volt receptacles located within six feet of kitchen or other food preparation area sinks, except for receptacles used solely for dedicated kitchen equipment.

(e) In critical patient care areas, electronic faucets requiring electricity to operate shall be connected to the critical or equipment branch of the emergency system. Domestic hot water systems shall be served by the equipment branch of the emergency system. A minimum of one kitchen refrigerator shall be served by the equipment branch of the emergency system.

(7) Nurses' Calling System:

(a) General. Each patient room shall be served by at least one calling station, except as exempted elsewhere in this chapter. Each such bed shall be provided with a call button. Two call buttons serving adjacent beds may be served by one calling station. Calls shall activate a visible signal in the corridor at the doors to patient's rooms and in all nurses' work stations. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. All nurses' call stations shall be electronically supervised to indicate when connecting devices are inoperable. Nurses' calling systems which provide two-way voice communication shall be equipped

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with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating;

(b) Emergency call system. A nurses' call emergency system shall be provided for each inpatient toilet, bath, sitz bath, and shower room, except as exempted elsewhere in this chapter. This system shall be usable by a collapsed patient lying on the floor. Inclusion of a pull cord will satisfy this standard. The emergency call system shall be designed so that all signal lights will remain lighted until turned off at the patient's calling station. Provisions for emergency calls will also be needed in outpatient and treatment areas where patients may be subject to incapacitation;

(c) Intensive care. In areas such as intensive care, recovery and pre-op where patients are under constant visual surveillance, the nurses' call system may be limited to a bedside button or station that activates a signal readily seen from the control station;

(d) Nurses' emergency. A calling station which may be used by nurses to summon assistance from other areas shall be provided in each operating, c-section, recovery, emergency examination and/or treatment area and in intensive care units, nurseries, special procedure rooms, stress test areas, cardiac catheterization, out-patient surgeries, special procedure rooms, emergency department triage/intake areas, and group areas for psychiatric patients. This system shall activate a visual and audible signal at all nurse work areas;

(e) In critical care, Post Anesthesia Care Unit recovery, and inpatient pre-op areas the nurse call system shall include provisions for an emergency code resuscitation alarm to summon assistance from outside the unit; and

(f) Each operating room shall be provided with a system for emergency communication with the surgical control station which can be operated without the use of the hands, but which is not foot operated. (Refer to OAR 333-535-0110(3)(a).)

(8) Emergency Electric Service:

(a) General. An emergency source of electricity shall be provided and connected to certain circuits for lighting and power during an interruption of the normal electric supply in accordance with NFPA 99, and shall include a fuel flow alarm to indicate an interruption of flow when the fuel tank is remote from the generator;

(b) Sources. The source(s) of this emergency electric service shall be:

(A) An emergency generating set when the normal service is supplied by one or more central station transmission lines; and

(B) An emergency generating set or a central station transmission line when the normal electric supply is generated on the premises.

(c) Emergency generating set. The required emergency generating set, including the prime mover and generator, shall be located on the premises and shall conform to NFPA 99 and 110;

(d) Emergency electric services shall be provided to all services that must continue to function during any failure of the normal power source as required in NFPA 70 and 99, including fire pump if installed. Sufficient fuel/power to operate the emergency electric services for a minimum of ninety-six hours shall be provided;

(e) Exhaust systems (including locations, mufflers and isolations) for internal combustion engines shall be of the critical silencer type and be installed to minimize objectionable noise. Where a generator is routinely used for reduction of peak loads, protection of patient areas from excessive noise may become critical; and

(f) Electrical plans shall include information indicating size of essential electrical service and load served by automatic transfer switch(es).

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

Stat. Auth.: ORS 441 & 442

Stats. Implemented: ORS 441 & 442

Hist.: HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0200(32) HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-074-0360; HD 21-1993, f. & cert. ef. 10-28-93; OHD 1-2002, f. & cert. ef. 2-28-02; PH 14-2005, f. 8-10-05, cert. ef. 8-15-05

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

Adm. Order No.: SPD 11-2005
Filed with Sec. of State: 7-28-2005
Certified to be Effective: 8-1-05
Notice Publication Date: 7-1-05

Rules Amended: 411-048-0000, 411-048-0130
Subject: OARs 411-048-0000 and 411-048-0130, Contract RN rules are permanently amended effective 08/01/2005. In order to be consistent with the Residential Care Facility (RCF) OARs last updated 04/01/04, SPD Contract RNs will no longer provide services (assess-

ment and monitoring) to clients living in the Residential Care Facility setting. The setting description "(RCF)" has been removed from the "Purpose" statement in 411-048-0000 of the Contract RN Service OARs and 'Residential Care Facility' has been added to the "Service Limitations" section in 411-048-0130.

Rules Coordinator: Lisa Richards—(503) 945-6398

**411-048-0000
 Purpose**

The purpose of these rules is to establish Department of Human Services (DHS) standards and procedures for the Seniors and People with Disabilities (SPD), Contract Registered Nurse (Contract RN) Service. DHS contracts with individual registered nurses to provide services to elderly clients, adults with physical disabilities and persons with developmental disabilities who are eligible to receive Long Term Care Services per OAR 411-015-000-0100 and chapter 411, division 320. Clients in Personal Care Services per OAR chapter 411, division 034 are eligible for Contract RN Services if an SPD funded case manager authorizes the services. Contract RN services are provided in adult foster homes (AFH), children's foster homes serving children with developmental disabilities, and in-home settings. Contract RN Services do not replace or substitute for nursing services required under rules for licensed facilities, or in situations where clients have access to licensed nursing services by the use of their support services brokerages.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410

Hist.: SDDS 8-2002, f. 9-30-02, cert. ef. 10-1-02; SPD 31-2004, f. 9-30-04, cert. ef. 10-1-04; SPD 11-2005, f. 7-28-05, cert. ef. 8-1-05

**411-048-0130
 Contract RN Service Limitations**

(1) Contract RN service is not provided if a client is:

(a) A resident of a nursing facility, assisted living facility, residential care facility, 24 hour DD group home, intermediate care facility for people with developmental disabilities, or enrolled in a Staley brokerage.

(b) In a program or residing in a setting where nursing is provided under contract with Seniors and People with Disabilities.

(c) A family member of the Contract RN.

(2) Exceptions to (1)(a) and (b) may be made by the Central Office.

(3) Contract RNs do not perform local office staff functions such as protective service investigations, pre-admission screenings, eligibility determinations, case manager assessment, or corrective action activities.

(4) Contract RN services cannot be provided as a substitute for other Medicaid or Medicare nursing services.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410

Hist.: SDDS 8-2002, f. 9-30-02, cert. ef. 10-1-02; Renumbered from 411-048-0090; SPD 31-2004, f. 9-30-04, cert. ef. 10-1-04; SPD 11-2005, f. 7-28-05, cert. ef. 8-1-05

**Department of Justice
 Chapter 137**

Adm. Order No.: DOJ 6-2005(Temp)
Filed with Sec. of State: 8-5-2005
Certified to be Effective: 8-5-05 thru 2-1-06
Notice Publication Date:
Rules Adopted: 137-008-0120

Subject: This rule is identical to the rule on the confidentiality of mediation communications, developed by the Attorney General pursuant to ORS 36.224(2). The rule covers all mediations involving the workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

Rules Coordinator: Carol Riches—(503) 378-6313

**137-008-0120
 Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications**

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which

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a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

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

(3) Nothing in this rule affects any confidentiality created by other law.

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

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

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

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.

(6) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) **Exceptions to confidentiality and inadmissibility.**

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

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

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

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

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

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confi-

dential information from the mediator or another party who does not agree to the disclosure.

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

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

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

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

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.230(4)

Hist.: DOJ 6-2005(Temp), f. & cert. ef. 8-5-05 thru 2-1-06

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

Adm. Order No.: OSFM 12-2005

Filed with Sec. of State: 8-15-2005

Certified to be Effective: 8-15-05

Notice Publication Date: 7-1-05

Rules Amended: 837-090-1145

Subject: The rule is being modified to reduce the Petroleum Load Fee collected on each load of petroleum products withdrawn in the state and each load imported in to the state from \$4.75 to \$2.50. The purpose of the fee reduction is to reduce a current cash carryover. Once the cash carryover is reduced it will be necessary to increase the fee to maintain program funding levels. The rule modification sets a fee collection schedule for current and future bienniums.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-090-1145

Petroleum Load Fee

(1) As provided in ORS 465.101 to 465.131, the petroleum load withdrawal fee is established to carry out the state's oil, hazardous materials and hazardous substance emergency response program as it relates to the maintenance, operation, and use of the public highways, roads, streets, and roadside rest areas. Effective October 1, 2005 the fee shall be \$2.50 per load, effective July 1, 2007 the fee shall be \$4.00 per load and effective July 1, 2009 the fee shall be \$6.00 per load.

(2) Fee collection by the Department of Revenue will begin October 1, 1993.

Stat. Auth.: ORS 465.106

Stats. Implemented: ORS 465.106

Hist.: FM 5-1993, f. & cert. ef. 11-1-93; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 12-2005, f. & cert. ef. 8-15-05

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Department of Public Safety Standards and Training Chapter 259

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

Filed with Sec. of State: 8-3-2005

Certified to be Effective: 8-3-05 thru 1-1-06

Notice Publication Date:

Rules Amended: 259-060-0300

Subject: Housekeeping changes needed to correct statutory references allowing the Department to issue a Notice of Intent to Revoke on currently pending contested cases and clarify procedures for issuing an Emergency Suspension Order.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-060-0300

Denial/Suspension/Revocation

(1) Grounds for Denying, Suspending or Revoking the Certificate of a Private Security Officer (armed or unarmed), Private Security Officer-Alarm Monitor, Instructor or the License of an Executive or Supervisory Manager; Process for Requesting Board Waiver:

(a) The Department may suspend, revoke or deny a license or certificate after written notice, and a hearing, if requested, based upon a finding that:

(A) The applicant or holder of the certificate or license falsified any information submitted on the application for certification or licensing or on any documents submitted to the Department or falsified any documents pertaining to Private Security certification or licensing;

(B) The license holder or applicant for licensure has violated the temporary assignment provisions of OAR 259-060-0120(1);

(C) The applicant or holder of the certificate or license has failed to timely submit properly completed forms, documentation or fees required under these rules;

(D) The applicant or holder of the certificate or license has violated the provisions of the Private Security Service Providers Act or these administrative rules or has failed to perform any acts required by these rules.

(b) The Department shall revoke or deny a license or certificate after written notice and a hearing, if requested, based upon a finding that:

(A) The applicant or holder of the license or certificate at any time fails to meet the criminal history requirements of OAR 259-060-0020(4);

(B) The holder of an armed security officer or firearms instructor certificate, or an applicant for such a certificate, fails to meet the minimum qualifications and requirements set forth in OAR 259-060-0020(5);

(C) The holder of an armed security officer or firearms instructor certificate, or an applicant for such, a certificate, suffers any disqualification, condition or circumstance which, under federal law or the law of this state, would disqualify the person from owning, possessing or purchasing a firearm; or

(c) Pursuant to OAR 259-060-0300(2)(f), the Department may suspend a license or certificate based upon a finding that:

(A) The holder of the certificate or license has been arrested for or charged with any crime listed in OAR 259-060-0020(4);

(B) The holder of the certificate or license has failed to successfully complete or timely report the annual or biennial refresher training and examination(s) required in OAR 259-060-0080; or

(C) The holder of the armed private security officer certification has failed to successfully complete or timely report the annual firearms marksmanship requalification required under OAR 259-060-0085.

(2) Denial, Suspension and Revocation Procedure:

(a) Employer Request: When the employer of the private security officer, private security officer-alarm monitor, private security manager or private security instructor requests that the person's certification or licensure be denied, suspended or revoked, the request shall be submitted in writing to the Department or its designated staff, stating the reason for the requested suspension, revocation or denial and all factual information supporting the request.

(b) Department Initiated Request: Upon receipt of factual information from any source, and pursuant to ORS 181.878, the Department or its designated staff may request that the person's certification or licensure be suspended, revoked or denied.

(c) Department Staff Review: The Department or its designated staff shall review the request and the supporting factual information to determine if the request for suspension, revocation or denial meets statutory and administrative rule requirements. If the reason for the request does not meet the statutory and administrative rule requirements for suspension, revocation or denial, the Department's designated staff shall so notify the

requestor. If the reason for the suspension, revocation or denial meets statutory and administrative rule requirements, but is not supported by adequate factual information, the Department or its designated staff shall request further information or conduct its own investigation of the matter.

(d) Initiation of Proceedings: The Department's designated staff shall determine if the reason for suspension, revocation or denial and supporting factual data meet the statutory and administrative rule requirements and so advise the Department or its designated committee.

(e) Contested Case Notice: The Department or its designated staff shall prepare a "Contested Case Notice" in accordance with OAR 137-003-0001 of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department or its designated staff must serve a copy of the "Notice" on the person whose certification or licensure is being affected.

(f) Emergency Suspension Order: Notwithstanding subsection (e), the Department may immediately suspend a person upon a report that a person has been arrested for, or charged with, any crime listed in OAR 259-060-0020(4). The report may be received in any form and from any source.

(g) An Emergency Suspension Order must be in writing. The order may be issued without prior notice to the individual and without a prior opportunity for a contested case hearing. An Emergency Suspension Order must:

(A) Generally describe the acts of the person and any circumstances that would be grounds for an Emergency Suspension Order under this rule; and

(B) Identify the person at the Department whom the individual may contact and who is authorized to make recommendations regarding issuance of the order.

(h) When the Department issues an Emergency Suspension Order, it shall be served on the individual either personally or by registered or certified mail and must contain the following information:

(A) The effective date of the Emergency Suspension Order;

(B) A statement of findings detailing the specific acts or omissions of the person that violate applicable laws or rules and which serve as the grounds for revocation or suspension;

(C) A reference to the sections of the statutes and rules involved;

(D) A statement indicating the individual has the right to request a hearing to contest the Emergency Suspension Order;

(E) A statement indicating the individual will have waived their right to a hearing regarding the Emergency Suspension Order if the request for a hearing is not received by the Department within 20 calendar days of the date of notice of the Emergency Suspension Order; and

(F) A statement indicating a hearing will be held as soon as is prudent and practicable if a timely request for a hearing is received.

(i) If the individual submits a timely request for a hearing, the Department will hold a hearing on the Emergency Suspension Order as soon as is prudent and practicable.

(A) The Department may combine the hearing on the Emergency Suspension Order with any underlying proceeding affecting the license or certificate.

(B) The sole purpose of the hearing will be to determine whether the individual was charged with or arrested for a crime listed in OAR 259-060-0020(4). Upon a showing that an individual was not charged with or arrested for a crime in OAR 259-060-0020(4), the suspension of the individual's certificate or license will be immediately lifted; otherwise, the suspension will remain in effect until final disposition of the charges or arrest.

(j) Response Time:

(A) Revocation or Denial: If the Department is seeking revocation or denial of a license or certificate, a party who has been served with the "Contested Case Notice" must submit a written request for a hearing to the Department within 60 calendar days from the date of mailing or personal service of the notice.

(B) Suspension: If the Department is seeking suspension of a license or certificate, a party who has been served with an Emergency Suspension Order must submit a written request for a hearing to the Department within 20 calendar days from the date of mailing or personal service of the notice. The Department may extend the time allowed for submission of the written request for a hearing for up to 30 calendar days upon request.

(k) Default Order: If a timely request for a hearing is not received by the Department, the Contested Case Notice or Emergency Suspension Order will become a final order revoking, suspending or denying certification pursuant to OAR 137-003-0075(5).

(l) When the Department revokes a certification or denies an applicant's license or certificate, an individual is ineligible to reapply for future certification or licensure for a period of four (4) years from the date of final

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Department action or order. Any applicant reapplying for certification or licensure must reapply in accordance with the provisions of the Private Security Service Act.

(m) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Hearings Officer Panel in accordance with OAR 137-003-0075(5).

(n) Waiver Request: It is the responsibility of the Board to set the standards, and of the Department to uphold them in such a manner so as to ensure the highest levels of professionalism and discipline. Those standards must be upheld at all times, unless there is a specific finding of substantial and compelling reason that demonstrates that neither the safety of the public nor the respect of the profession will be compromised by a waiver. Certain criminal convictions will not qualify for waiver request, as identified in OAR 259-060-0020(4). In the event that a waiver of denial, suspension or revocation is granted, the Board's decision must be in writing. The waiver request will suspend timelines for a contested case hearing until an order granting or denying the waiver has been issued. The waiver process applies only to the petitioners who have been certified and licensed under the Private Security Service Providers Act of 1995 on or before October 23, 1999.

(A) The policy committee may consider limited waivers to the Department's notice of intent to deny, suspend or revoke certification or licensure, and forward a recommendation to the Board, based upon:

(i) The petitioner having been licensed or certified under the Private Security Service Providers Act of 1995 on or before October 23, 1999;

(ii) The length of time that has elapsed between petitioner's disqualifying conviction and application to the Department is substantial and in the case of a lifetime disqualifier, the length of time exceeds 20 years;

(iii) Letters of reference attesting to good moral and ethical fitness;

(iv) The petitioner's age at the time of the conviction;

(v) Absence of other criminal convictions; and

(vi) A written explanation of any substantial or compelling reasons, including but not limited to mitigating circumstances of the arrest.

(B) It is the responsibility of the petitioner to request a waiver within 20 calendar days of the Department's notice of denial or revocation.

(C) It is the responsibility of the petitioner to present to the policy committee all information relative to the request for waiver, in writing, not less than 15 days prior to the next regularly scheduled policy committee meeting. The policy committee will make its recommendation to the Board, following review of those documents.

Stat. Auth.: ORS 181.878, 181.882 & 181.885

Stats. Implemented: ORS 181.878 & 181.885

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. & cert. ef. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 10-2003(Temp), f. & cert. ef. 6-16-03 thru 12-1-03; DPSST 12-2003, f. & cert. ef. 7-24-03; DPSST 6-2004, f. & cert. ef. 4-23-04; DPSST 5-2005(Temp), f. & cert. ef. 8-3-05 thru 1-1-06

Adm. Order No.: DPSST 6-2005(Temp)

Filed with Sec. of State: 8-4-2005

Certified to be Effective: 8-4-05 thru 1-1-06

Notice Publication Date:

Rules Adopted: 259-009-0061

Subject: Requires minimum standards for employment as a Fire Service Professional; requires minimum age of 18 for certification as a Fire Service Professional.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-009-0061

Minimum Standards for Employment as a Fire Service Professional

(1) No person may be certified as a Fire Service Professional who has not yet attained 18 years of age.

(2) Only training received after attaining the age of 16 may be applied for certification purposes.

(3) DPSST Fire Service Agency affiliation may be attained after the age of 16 via submission of a PAF-1 (Personnel Action Form).

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.610 & 181.640

Stats. Implemented: ORS 181.610 & 181.640

Hist.: DPSST 6-2005(Temp), f. & cert. ef. 8-4-05 thru 1-1-06

Adm. Order No.: DPSST 7-2005

Filed with Sec. of State: 8-5-2005

Certified to be Effective: 8-5-05

Notice Publication Date: 5-1-05

Rules Amended: 259-008-0040

Subject: 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 exceeding one year. Provision allows for terms of remediation upon the officer's return to law enforcement.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-008-0040

Period of Service

(1) A law enforcement officer, telecommunicator, or emergency medical dispatcher not currently certified shall satisfactorily complete a period of service of not less than nine (9) months in the field in which they are employed, to be eligible for certification. This requirement shall not apply to a department head.

(2) No person shall be employed as a police officer, parole and probation officer, telecommunicator, or emergency medical dispatcher for more than 18 months unless that officer, telecommunicator, or emergency medical dispatcher has been certified under the provisions of ORS 181.610 to 181.705 and the certification has neither lapsed nor been revoked.

(3) No person shall be employed as a corrections officer for more than one (1) year unless that officer has been certified under the provisions of ORS 181.610 to 181.705 and the certification has neither lapsed nor been revoked.

(4) The Board or its designee, upon the facts contained in an affidavit accompanying the request for an extension, may find good cause for failure to obtain certification within the time period described in section (2) of this rule. If the Board finds that there is good cause for such failure, the Board may extend for up to one year the period that a person may serve as a law enforcement officer, telecommunicator, or emergency medical dispatcher without certification. The grant or denial of such an extension is within the sole discretion of the Board.

(5) The Board, or its designee, may further extend the time period for a law enforcement officer, telecommunicator, or emergency medical dispatcher who has been deployed to full-time active military duty during the time period described in section (2) or (3) of this rule. Conditions for certification upon an officer's return to his/her employer, may include, but are not limited to:

(a) Remediation of Basic course;

(b) Successful completion of Career Officer Development Course;

(c) Demonstrated proficiency of skills and ability;

(d) F-2 (Medical Form).

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & cert. ef. 12-19-77; Renumbered from 259-010-0020; PS 1-1983, f. & cert. ef. 12-15-83; Renumbered from 259-010-0047; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; DPSST 7-2005, f. & cert. ef. 8-5-05

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

Adm. Order No.: DMV 17-2005

Filed with Sec. of State: 7-22-2005

Certified to be Effective: 7-22-05

Notice Publication Date: 6-1-05

Rules Amended: 735-070-0185

Rules Repealed: 735-070-0185(T)

Subject: This rule establishes the documents that must be submitted by a medical review officer to report a positive drug test result of a commercial motor vehicle driver to DMV under ORS 825.410. One of the required documents is Copy 2 of the Federal Drug Testing Custody and Control Form (CCF). DMV has determined that the rule was too restrictive because it did not allow DMV to accept a document that contains the required information, either because the information is not on Copy 2 of the CCF or it is unclear whether DMV had received Copy 2. For example, on facsimiles the portion that appears on the bottom border of the form showing it is Copy 2 is often cut off or illegible. In other cases the Medical Review Offi-

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cer was sending the information on something other than Copy 2. DMV was unable to post a valid positive drug test result on a commercial driver's employment driving record when this occurs, which is contrary to the statutory intent of ORS 825.412. The amendments to OAR 735-070-0185 specify that either a completed Copy 2 of the CCF or any other document that contains the specific information required in federal regulations must be included as a report of a positive drug test. This will authorize DMV to post all valid positive drug test results on employment driving records as required under ORS 825.412. This amendment replaces a temporary rule that has been in effect since February 17, 2005.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-070-0185

Report of Positive Drug Test Result from Medical Review Officer

(1) The report submitted by a medical review officer under ORS 825.410 must include a Report of Positive Drug Test Under ORS 825.410 (DMV form 735-7200) and:

(a) A legible copy of a completed Federal Custody and Control Form, Copy 2 — Medical Review Officer Copy; or

(b) Either an original or legible copy of a document that contains, at a minimum, the following information:

(A) Full name of the person tested;

(B) Specimen ID number;

(C) Place of Specimen Collection;

(D) Date of Specimen Collection;

(E) Collector's name;

(F) Whether a split specimen was collected;

(G) The person tested certified by signature that: he or she provided an unadulterated specimen to the collector; the specimen bottle was sealed with a tamper evident seal in the person's presence; and the information on the label affixed to the specimen bottle was correct;

(H) The date the Medical Review Officer verified the test result; and

(I) Signature of the Medical Review Officer.

(2) The Department of Transportation will not send notice as required by ORS 825.412 until a report as described in section (1) of this rule is received by the agency.

(3) The requirements of this rule shall apply retroactively to all reports submitted on or after September 21, 2000.

Stat. Auth.: ORS 184.616, 184.619 & 802.020

Stats. Implemented: ORS 825.410 & 825.412

Hist.: DMV 8-2001, f. & cert. ef. 3-7-01; DMV 5-2002(Temp), f. & cert. ef. 3-14-02 thru 9-9-02; DMV 9-2002, f. & cert. ef. 5-16-02; DMV 4-2005(Temp), f. 2-16-05, cert. ef. 2-17-05 thru 8-15-05; DMV 17-2005, f. & cert. ef. 7-22-05

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Department of Transportation, Highway Division Chapter 734

Adm. Order No.: HWD 6-2005

Filed with Sec. of State: 7-22-2005

Certified to be Effective: 7-22-05

Notice Publication Date: 5-1-05

Rules Amended: 734-020-0005, 734-020-0430, 734-020-0460

Subject: The 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 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 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 also clarifies the process for reinstating locations not advanced to construction within five years after placement on the Traffic Signal Approval List. The 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.

Rules Coordinator: Brenda Trump—(503) 945-5278

734-020-0005

Manual on Uniform Traffic Control Devices

(1) In accordance with ORS 810.200, the 2003 Edition of the Manual on Uniform Traffic Control Devices with Revision no. 1 Incorporated, dated November 2004 (U.S. Department of Transportation, Federal Highway Administration) is hereby adopted by reference as the manual and specifications of uniform standards for traffic control devices for use upon highways within this state.

(2) The Oregon Supplement to the Manual on Uniform Traffic Control Devices dated July 2005 is hereby adopted by reference as a register of deviations to the 2003 Edition of the Manual on Uniform Traffic Control Devices.

(3) The Oregon Temporary Traffic Control Handbook dated July 2005 is hereby adopted by reference as a standard for short-term traffic control.

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

Stat. Auth.: ORS 184.616, 184.619 & 810.200

Stats. Implemented: ORS 810.200

Hist.: HC 1270, f. & ef. 1-18-72; HC 1277, f. & ef. 3-3-72; 1 OTC 80, f. & ef. 12-27-76; 1 OTC 7-1978, f. & ef. 4-27-78; 1 OTC 15-1979(Temp), f. & ef. 7-18-79; 1 OTC 25-1979, f. & ef. 10-30-79; 1 OTC 16-1980, f. & ef. 9-18-80; 1 OTC 22-1980, f. & ef. 11-26-80; 1 OTC 23-1980, f. & ef. 11-26-80; 2HD 9-1983(Temp), f. & ef. 4-20-83; 2HD 16-1983, f. & ef. 9-23-83; 2HD 9-1984(Temp), f. & ef. 10-4-84; 2HD 1-1985, f. & ef. 3-29-85; 2HD 3-1985, f. & ef. 9-13-85; 2HD 1-1986, f. & ef. 2-14-86; 2HD 6-1986(Temp), f. & ef. 7-29-86; HWY 1-1987, f. & ef. 1-9-87; HWY 2-1988(Temp), f. & cert. ef. 5-27-88; HWY 7-1988, f. & cert. ef. 12-2-88; HWY 2-1990(Temp), f. & cert. ef. 2-1-90; HWY 10-1990, f. & cert. ef. 6-29-90; TO 3-2002, f. & cert. ef. 4-15-02; HWD 6-2005, f. & cert. ef. 7-22-05

734-020-0430

Traffic Signal Approval List

(1) No traffic signal shall be designed for, or constructed on, the State Highway System, regardless of the funding source, without the prior approval of the State Traffic Engineer.

(2) Documents or plans, including land use plans, corridor plans, or construction documents which have been approved by ODOT and which identify new traffic signals must still receive approval by the State Traffic Engineer prior to traffic signal design or construction.

(3) The State Traffic Engineer shall maintain a list of locations on State Highways for which approval has been obtained for the installation and operation of a traffic signal. The inclusion of a location on the Traffic Signal Approval List does not assure the eventual design, installation, or operation of a traffic signal, but does eliminate the need for additional investigation should construction of the signal be advanced. All of the following apply to listed intersections:

(a) Intersections shall meet MUTCD traffic signal warrants (unless subject to the conditions of OAR 734-020-0490) which shall be indicated for each listed intersection;

(b) Each ODOT Region shall determine the order in which traffic signals will be installed; and

(c) If not advanced to construction within five years after placement on the Traffic Signal Approval List, the location shall be removed from the list until such time that ODOT Region staff review the intersection to determine if the traffic signal warrants and other criteria are still satisfied and submit a request to the State Traffic Engineer to reinstate the location on the list.

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

Stats. Implemented: ORS 810.200 & 810.210

Hist.: TO 5-1999, f. & cert. ef. 12-17-99; HWD 6-2005, f. & cert. ef. 7-22-05

734-020-0460

Consideration for Approval of a Traffic Signal Installation

The following conditions shall be considered by ODOT for approval of a proposed traffic signal installation:

(1) A traffic signal shall not be installed unless one or more of the warrants identified in the MUTCD are met or will be met consistent with the requirements of OAR 734-020-0490. The satisfaction of a warrant or warrants, however, is not in itself justification for a traffic signal.

(2) Information to determine the need for a traffic signal shall be obtained by means of comprehensive investigation of traffic conditions and physical characteristics of the proposed traffic signal location and compared with the requirements set forth in the traffic signal warrants and appropriate highway design standards.

(3) The traffic engineering investigation shall indicate the installation of a traffic signal would improve the overall safety and operation of the intersection.

(4) Other roadway factors to be considered include, but are not limited to speed, type of highway, grades, sight distance, existing level of service, conflicting accesses, alternate accesses, and effect on existing or future traffic signal systems.

(5) The placement of traffic signals shall conform to the requirements of the 1999 Oregon Highway Plan.

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Stat. Auth.: ORS 184.616, 184.619, 366.205 & 810.200
Stats. Implemented: ORS 810.200 & 810.210
Hist.: TO 5-1999, f. & cert. ef. 12-17-99; HWD 6-2005, f. & cert. ef. 7-22-05

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

Adm. Order No.: MCTD 3-2005
Filed with Sec. of State: 7-22-2005
Certified to be Effective: 7-22-05
Notice Publication Date: 6-1-05
Rules Amended: 740-035-0200

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

Rules Coordinator: Brenda Trump—(503) 945-5278

740-035-0200

Motor Carrier Education Program

The Motor Carrier Education Program provides motor carriers with basic information required to conduct motor carrier operations in Oregon. In addition to the provisions of ORS 825.402, the following apply to the Motor Carrier Education Program:

(1) As used in ORS 825.402, "Domiciled in Oregon" means a motor carrier has established its principal place of business, as indicated on the Application for Motor Carrier Permit (Form 735-9075, revised 6/02), in Oregon; and

(2) As used in ORS 825.402 and OAR 740-035-0200 through 740-035-0260, "Participate in the program" means that a person having a substantial interest or control, directly or indirectly, in the motor carrier operations has reviewed the basic information outlining the requirements to conduct motor carrier operations in Oregon.

Stat. Auth.: ORS 823.011 & 825.402
Stats. Implemented: ORS 825.400 & 825.402
Hist.: PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-062-0090; MCT 5-1996, f. & cert. ef. 9-17-96; MCTB 5-2002, f. & cert. ef. 11-18-02; MCTD 3-2005, f. & cert. ef. 7-22-05

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**Department of Veterans' Affairs
Chapter 274**

Adm. Order No.: DVA 5-2005
Filed with Sec. of State: 7-22-2005
Certified to be Effective: 7-22-05
Notice Publication Date: 7-1-05
Rules Amended: 274-020-0345, 274-045-0080
Rules Repealed: 274-020-0345(T), 274-045-0080(T)

Subject: This rule replaces and supersedes the Temporary Rules 274-020-0345(T) and 274-045-0080(T) filed on June 3, 2005, and effective upon filing through November 30, 2005.

This proposed amendment rule revises the requirement that, in order to obtain a home loan through the Department, the veteran borrower must have equity in the property at the time of purchase. This proposed amendment will also help the loan program provide loans to a larger number of veterans and remain solvent.

Rules Coordinator: Herbert D. Riley—(503) 373-2055

274-020-0345

Approval of the Loan

The approval of any loan shall be dependent upon the following:

(1) The veteran applicant must meet the minimum Federal National Mortgage Association (FNMA) credit underwriting requirements as set forth in **FNMA Selling Guide**, a copy of which is on file with the Department of Veterans' Affairs.

(2) The veteran applicant may be required to have an equity in the property.

(3) Secondary financing may be permitted.

(4) Construction shall meet the minimum standards set by federal, state and local laws.

(5) A performance bond may be required for new construction.
(6) Inspections to prove the premises safe, sanitary, and structurally sound may be required, and the loan may be refused if the construction is inferior.

(7) The security shall be served by adequate means of legal and physical access and shall have an acceptable potable water supply.

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

Stat. Auth.: ORS 183, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305 & 407.375

Stats. Implemented: ORS 407.115, 407.125 & 407.225

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 32, f. 12-2-65, ef. 10-25-65; DVA 50, f. 11-16-77, ef. 12-1-77; DVA 2-1978, f. & ef. 12-1-78; DVA 7-1982, f. & ef. 3-15-82; DVA 3-1991, f. 5-30-91, cert. ef. 6-3-91; DVA 5-1993, f. 3-16-93, cert. ef. 3-21-93; DVA 7-1995, f. & cert. ef. 7-21-95; DVA 4-2005(Temp), f. & cert. ef. 6-3-05 thru 11-30-05; DVA 5-2005, f. & cert. ef. 7-22-05

274-045-0080

Approval of the Loan

The approval of any loan shall be dependent upon the following:

(1) The veteran applicant must meet the minimum Federal National Mortgage Association (FNMA) credit underwriting requirements as set forth in **FNMA Selling Guide** (Guide), where not inconsistent Oregon Revised Statutes. A copy of the Guide is on file with the Oregon Department of Veterans' Affairs, 700 Summer Street NE, Salem, Oregon 97301-1285, and may be viewed during normal business hours.

(2) The veteran applicant may be required to have equity in the property.

(3) Secondary financing may be permitted.

(4) Construction shall meet the minimum standards set by federal, state or local laws.

(5) A performance bond may be required for new construction.

(6) Inspections to prove the premises safe, sanitary and structurally sound may be required, and the loan may be refused if the construction is inferior.

(7) The security shall be served by adequate means of legal and physical access and shall have an acceptable potable water supply.

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

Stat. Auth.: ORS 183, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305 & 407.375

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 4-2005(Temp), f. & cert. ef. 6-3-05 thru 11-30-05; DVA 5-2005, f. & cert. ef. 7-22-05

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**Economic and Community Development Department
Chapter 123**

Adm. Order No.: EDD 6-2005(Temp)

Filed with Sec. of State: 8-5-2005

Certified to be Effective: 8-5-05 thru 1-31-06

Notice Publication Date:

Rules Amended: 123-021-0090

Subject: Allows the Oregon Economic and Community Development Department to extend loan guarantees under the Credit Enhancement Fund for longer than five years (with year by year approval) for working capital loans.

Rules Coordinator: Paulina Bernard—(503) 986-0036

123-021-0090

Loan Insurance Programs

The Department shall offer the following Insurance Programs:

(1) Conventional Insurance, under which the Department may insure up to 90 percent of a loan to a maximum of \$500,000. Should a Borrower which receives an insured loan default or otherwise be unable to make loan payments, the Department would pay the Financial institution up to 90 percent of the deficiency. The balance of any loss is absorbed by the Financial institution. Loan payments and the proceeds of collateral are applied pro rata to the insured and uninsured portion of a loan. The Department's obligation would be limited to a payment of the insured percentage of a loan times the amount of principal, accrued interest and the Financial institution's reasonable costs of collection, exclusive of costs attributed to environmental problems, remaining unpaid after liquidation of collateral, up to the lesser of \$500,000 or an amount equal to the insured percentage of the original loan amount authorized in the Loan authorization.

(2) Evergreen Entrants Insurance, under which the Department may insure up to 75 percent, on a pro rata basis, of a line of credit Working capital loan, not to exceed the lesser of \$250,000 or an amount equal to the insured percentage of the original loan amount authorized in the Loan Authorization. Eligible borrowers include persons or enterprises without or about to be without existing line of credit Working capital loans. To participate in the Evergreen Entrants Program, the Department must be satisfied

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the Financial institution has the capacity to service the loan effectively, including monitoring compliance with any audit and control procedures prescribed by the Department or comparable procedures of the Financial institution approved by the Department.

(3) First Loss Insurance, under which the Department may insure 100 percent of any loss to a Financial institution up to the lesser of 25 percent of the original loan amount or \$300,000. If a Financial institution makes a payment request, the Department's obligation would be limited to 100 percent of the amount of principal, accrued interest and the Financial institution's reasonable costs of collecting the loan, exclusive of costs attributable to environmental problems, remaining unpaid after liquidation of collateral, up to the lesser of: 25 percent of the outstanding balance of the loan, including accrued interest and reasonable costs and expenses of collection and liquidation of collateral, but not taking into account the proceeds of liquidation and payments by guarantors, or an amount equal to the insured percentage of the original loan, or \$300,000.

(4)(a) Evergreen Plus Insurance, under which the Department may insure up to 90 percent of a new increment of a line of credit Working capital loan, with maximum insurance of \$300,000. If a Financial institution makes a payment request for any deficiency remaining after liquidation of collateral and payment by any guarantors, the Department's obligation would be limited to the lesser of:

- (A) A ratable share of the total default charges; or
- (B) 90 percent of the deficiency.

(b) The formula for calculating the Department's ratable share of total default charges is:

$$\frac{\text{Guaranteed Loan Amount} \\ \text{(as set out in Authorization)}}{\text{Total credit facility made available}} \\ \times \\ \text{(Principal outstanding upon default} \\ \text{plus accrued interest and liquidation charges)}$$

(c) Qualified businesses include persons or enterprises with existing line of credit Working capital loans. To participate in the Evergreen Plus program, a Financial institution must have in place and operating a lending program specializing in loans secured by accounts receivable and inventory, as determined by the Department. The Department must be satisfied that the Financial institution is sufficiently experienced and capable of operating an effective Evergreen Plus Program.

(5) The Conventional and First Loss Insurance Programs are available for all types of loans for eligible purposes, including Working capital loans that are secured by fixed assets.

Stat. Auth.: ORS 285.065 & 285.466 - 285.481
Stats. Implemented: ORS 285.474(4)
Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 13-2002(Temp), f. & cert. ef. 6-18-02 thru 12-13-02; Administrative correction 4-15-03; EDD 6-2005(Temp), f. & cert. ef. 8-5-05 thru 1-31-06

Land Conservation and Development Department Chapter 660

Adm. Order No.: LCDD 5-2005

Filed with Sec. of State: 8-12-2005

Certified to be Effective: 8-12-05

Notice Publication Date: 6-1-05

Rules Amended: 660-002-0005, 660-002-0010, 660-002-0015, 660-002-0020

Subject: The adopted rules replace the Temporary rules filed on March 18, 2005, to amend OAR 660-002, 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 rules require the Director to provide non-monetary relief in response to claims that are determined to be valid, unless the Oregon legislature appropriates funds to DLCD for the payment of claims.

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

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; LCDD 5-2005, f. & cert. ef. 8-12-05

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; LCDD 5-2005, f. & cert. ef. 8-12-05

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; LCDD 5-2005, f. & cert. ef. 8-12-05

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 affect-

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ed 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.

(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; LCDD 5-2005, f. & cert. ef. 8-12-05

Occupational Therapy Licensing Board Chapter 339

Adm. Order No.: OTLB 1-2005

Filed with Sec. of State: 8-11-2005

Certified to be Effective: 8-11-05

Notice Publication Date: 7-1-05

Rules Adopted: 339-010-0016

Rules Amended: 339-010-0005, 339-010-0050, 339-020-0010, 339-020-0020, 339-020-0100

Rules Repealed: 339-020-0030, 339-020-0040, 339-020-0050, 339-020-0060, 339-020-0070

Subject: These rules redefine Continuing Education making it the same for every licensee, update CE Categories and Points, add Re-Entry requirements for non-licensed applicants; redefine Mentorship to be used for CE credit; delete term "handicapped" when occupational therapists work with children in educational settings.

Rules Coordinator: Felicia Holgate—(971) 673-0198

339-010-0005

Definitions

(1) "Supervision," is a process in which two or more people participate in a joint effort to promote, establish, maintain and/or evaluate a level of performance. The occupational therapist is responsible for the practice outcomes and documentation to accomplish the goals and objectives. Levels of supervision:

(a) "Close supervision" requires daily, direct contact in person at the work site;

(b) "Routine supervision" requires the supervisor to have direct contact in person at least every two weeks at the work site with interim supervision occurring by other methods, such as telephone or written communication.

(c) "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.

(2) "Leisure," as it is used in ORS 675.210(3) means occupational behavior that is developed as part of an individual occupational therapy evaluation and treatment process. This process is goal oriented toward the maximum health of the patient by the interaction of self-care, work and leisure, and is not used as an isolated recreation activity. The use in this way does not include leisure activities as used by therapeutic recreation specialists.

(3) "Licensed occupational therapy practitioner," for purposes of these rules, means an individual who holds a current occupational therapist or occupational therapy assistant license.

(4) "Occupational therapy aide," as it is used in OAR 339-010-0055, means an unlicensed worker who is assigned by the licensed occupational therapy practitioner to perform selected tasks.

(5) "Mentorship," as it is used in these rules, is a collaborative experience of direct contact between currently licensed occupational therapy practitioners for the purpose of updating professional skills. Mentorship may include, but is not limited to, mentee observation of the mentor's prac-

tice, classroom work, case review and discussion, and review and discussion of professional literature.

Stat. Auth.: ORS 675.320(11), (13) & (14)

Stats. Implemented: ORS 675.210(4) & 675.320(13)

Hist.: OTLB 1-1979, f. & ef. 6-7-79; OTLB 1-1988, f. & cert. ef. 1-29-88; OTLB 2-1990, f. & cert. ef. 12-20-90; OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 2-2003, f. & cert. ef. 9-11-03; OTLB 1-2005, f. & cert. ef. 8-11-05

339-010-0016

CE Requirements for Applicants for Licensure

(1) All applicants for licensure who have passed the NBCOT certification examination and have been unlicensed for up to three years will need 15 points of board approved continuing education a year prior to becoming licensed in Oregon.

(2) All applicants for licensure who have passed the NBCOT certification examination more than a one year ago and have been unlicensed for more than three years will:

(a) Successfully complete a Board approved Re-Entry Program specifically designed for occupational therapists preparing them for re-entry into the field of occupational therapy; or

(b) Successfully retake and pass the NBCOT examination within the previous year.

(3) The Board has the discretion to waive requirement for license application requirements.

Stat. Auth.: ORS 675.320(10) & (11)

Stats. Implemented:

Hist.: OTLB 1-2005, f. & cert. ef. 8-11-05

339-010-0050

Occupational Therapy Services For Children in an Educational Setting

(1) Types of services:

(a) Direct services are services at least once a week regularly scheduled;

(b) Monitoring services (not to be considered as a substitute for direct intervention):

(A) The occupational therapist completes the evaluation and develops the intervention plan but instructs others to carry out the procedures;

(B) The child's health and safety must be maintained;

(C) The person employed by an educational agency must be an adult specifically designated to receive training in providing the ongoing educational programs as designated by the licensed occupational therapist;

(D) The person being trained must be able to demonstrate the procedures correctly without prompting from the occupational therapist;

(E) The person being trained must be able to name the restrictions put on the procedure by the occupational therapist and point out safety factors and precautions without prompting.

(2) Appropriate documentation of services for children with handicap in the educational setting:

(a) The occupational therapist is responsible for deciding the level of occupational therapy services appropriate for the child and these services must be clearly stated;

(b) The occupational therapist is responsible for the occupational therapy evaluation design of the occupational therapy services to be provided and writing the occupational therapy goals and objectives;

(c) It must be defined which occupational therapy services are to be provided by the occupational therapist and which services are part of the child's educational routine;

(d) If an occupational therapist is monitoring a portion of the child's educational program, then that therapist is responsible for frequent and consistent contact with the child. The occupational therapist is also responsible for re-evaluation and assessment on a regular basis;

(e) The occupational therapist is responsible for direct training and supervision of designated adults carrying out the educational programs that are designed by the occupational therapist and defined in the individual plan;

(f) The occupational therapist is responsible for these program outcomes and documentation to accomplish the goals and objective.

Stat. Auth.: ORS 675.230, 675.240, 675.250, 675.300 & 675.310

Stats. Implemented: ORS 675.210(4), 675.240(1) & (2), 675.250(2) & (3), 675.300(1)(a) & 675.320(11)

Hist.: OTLB 2-1993(Temp), f. & cert. ef. 7-1-93; OTLB 1-1994, f. & cert. ef. 1-24-94; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 1-2005, f. & cert. ef. 8-11-05

339-020-0010

CE Requirements for Current Licensees

(1) All current licensees shall obtain a minimum of 30 points of CE from Board approved categories during the two years immediately preceding the date of the license renewal.

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(2) Exception: Current licensees who have had their licenses for less than two full years, but more than one year, shall obtain a minimum of 15 points of CE from Board approved categories during the year immediately preceding the date of the license renewal.

Stat. Auth.: ORS 675.320(11) & (12)

Stats. Implemented:

Hist.: OTLB 2-1994, f. 4-11-94, cert. ef. 6-1-94; OTLB 1-2005, f. & cert. ef. 8-11-05

339-020-0020

CE Categories and Points

These numbers refer to a two year total of 30 points. Credit for CE shall be calculated on a point basis in the following categories and must relate to occupational therapy services. It is the responsibility of the licensee to demonstrate how specific classes contribute to the development of the occupational therapy skills. "Application to OT Services" (CE Log) must be included for credit. Unless stated otherwise, one point equals one contact hour. Sixteen to 30 required CE points must come from categories 1-11. A limit of 14 of the required CE points may be accrued from categories 12-18.

(1) Attendance at university, college or vocational technical adult education courses at or above practice level: Four points per credit hour. Documentation of successful completion required.

(2) Attendance at seminars, workshops, or institutes: One point per direct hour of content.

(3) Completion of educational telecommunication network or on-line courses: Points as awarded by certificate or per credit, see (1). Certificate of successful completion required.

(4) Attendance at educational sessions relating to occupational therapy sponsored by OTAO, AOTA, AOTA approved providers, and NBCOT or professional academic institutions relating to occupational therapy: One point per hour of attendance. Certificate of attendance required.

(5) Satisfactory completion of American Occupational Therapy Association approved courses/materials or courses/materials offered by AOTA approved providers: Points per certificate on completion. Documentation of satisfactory completion required.

(6) Publication — Copy of publications required.

(a) Publication of article in non-peer reviewed publication (e.g. OT Practice, SIS Quarterly, Advance, etc.): Five points per article.

(b) Publication of article in peer-reviewed professional publication (e.g. journals, book chapter, research paper): Ten points per article.

(c) Publication of chapter(s) in occupational therapy or related textbook: Ten points per chapter.

(7) Professional presentation (person presenting): Presentation must be at practice level for credit, e.g. CNA training would not be acceptable: Two points per hour with no additional points for subsequent presentation of same content. Course outline must be provided.

(8) Development of alternative media (computer software, video or audio tapes): Three points/hr of finished product. Outline required.

(9) Completing requirements for occupational therapy specialty certification (initial or recertification one time only for each specialty): 12 points. Copy of certificate required.

(10) Research, provided an abstract of the research is retained to prove participation: Principal — Eight points. Associate — Six points.

(11) Development and implementation of a school approved Level II student program (one time only and completed within a year): Four points. Copy of program must be provided.

(12) In-service training: One point per hour of attendance.

(13) Attendance at videotaped presentations of educational courses, seminars, workshops or institutes (group viewing with discussion): One-half point per direct hour of viewing with additional points for discussion, not to exceed seven points.

(14) Student supervision, Level I Fieldwork: One point for 8 hours of supervision.

(15) Student supervision, Level II Fieldwork: One point for 8 hours of supervision.

(16) Mentoring; as defined in OAR-339-010-0005(5): One point for every eight hours contract mentoring with documentation. Points may be obtained for both the mentor and the mentee.

(17) Professional leadership on a Board or Commission relating to OT — Volunteer services to organizations, populations, and individuals that advance the reliance on and use of one's occupational therapy skills and experiences to the volunteer setting or experience: 10 hours equal two points. Up to four points a year with documentation.

(18) Re-Entry Supervisors: Therapists providing supervision under OAR 339-010-0016: One point for 8 hours.

Stat. Auth.: ORS 675.320(11) & (12)

Stats. Implemented: ORS 675.210(4), 675.240(1) & (2), 675.250(2) & (3), 675.300(1)(a) & 675.320(11)

Hist.: OTLB 2-1994, f. 4-11-94, cert. ef. 6-1-94; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 1-2003, f. & cert. ef. 3-4-03; OTLB 2-2003, f. & cert. ef. 9-11-03; OTLB 1-2005, f. & cert. ef. 8-11-05

339-020-0100

Mentorship between licensees for CE Credit

For purposes of mentorship between licensed occupational therapy practitioners, in order to obtain CE credit:

(1) Enter into a written mentorship agreement signed by both parties that includes a detailed description of the planned and collaborative experience and the goals to be achieved under the plan;

(2) Provide written documentation signed and dated by both parties that the mentorship was successfully completed, if requested by the Board.

(3) Both the mentor and the mentee may obtain CE credit under OAR 339-020-0020.

Stat. Auth.: ORS 675.320(11) & (12)

Stats. Implemented: ORS 675.320(12)

Hist.: OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 2-2003, f. & cert. ef. 9-11-03; OTLB 1-2005, f. & cert. ef. 8-11-05

Oregon Housing and Community Services Chapter 813

Adm. Order No.: OHCS 1-2005(Temp)

Filed with Sec. of State: 8-4-2005

Certified to be Effective: 8-4-05 thru 1-31-06

Notice Publication Date:

Rules Adopted: 813-005-0001, 813-005-0016

Rules Amended: 813-005-0005

Rules Suspended: 813-005-0010, 813-005-0015, 813-005-0020, 813-005-0025, 813-005-0030

Subject: 813-005-0005(23) establishes the threshold for loans requiring State Housing Council review arising under ORS 456.515 to 456.726. HB 2054 removed from statute the \$150,000 threshold for single-family loan review and allows the department, with Housing Council approval, to enact administrative rules establishing the single-family loan review threshold. 813-001-0006 establishes the single-family loan review threshold as the purchase price, which when reduced by costs of purchase other than the Department loan, is equal to or greater than \$190,000.

Amendments contained in 813-005-0005 clarify the common definitions found within programs of the department and provides an update on the list of programs relating specifically to housing. 813-005-0010, 813-005-0015, 813-005-0020, 813-005-0025 and 813-005-0030 are administrative corrections intended to remove unnecessary language from the department rules. 813-005-0016 adds waiver language already provided within statute.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-005-0001

General Purpose

OAR chapter 813, division 005, is promulgated to accomplish the general purpose of describing common terms and procedures with respect to the administration of the Housing and Community Services Department of its statutory duties.

Stat. Auth.: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617

Stats. Implemented: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617

Hist.: OHCS 1-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-005-0005

Definitions

(1) All Terms used in OAR chapter 813 have the meanings given them in the Act, in this section or otherwise in OAR chapter 813 unless the context indicates to the contrary. Undefined terms are intended to be read consistently with their normal usage unless the context indicates otherwise.

(2) Pursuant to ORS 456.555(5)(b) the Housing and Community Services Department by administrative rule, must identify and distinguish between housing programs and community services programs. Any program administered by the Department that is not listed in this subsection or otherwise defined in statute or in this chapter as a housing program is a

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“community service program.” Accordingly, the following programs administered by the department are housing programs:

- (a) Multi-Unit Housing Program (OAR 813-010);
- (b) Rental Housing Program (OAR 813-012);
- (c) Oregon Rural Rehabilitation Program (OAR 813-015);
- (d) Single-Family Mortgage Program (OAR 813-020);
- (e) Elderly Housing Program (OAR 813-030);
- (f) Pass-Through Revenue Bond Financing (OAR 813-035);
- (g) Pre-Development Program (OAR 813-038);
- (h) Farmworker Housing Development Account (OAR 813-039);
- (i) Seed Money Advance Program (OAR 813-040);
- (j) Farmworker Housing Tax Credit Program (OAR 813-041);
- (k) Housing Development Program (OAR 813-042);
- (l) Housing Loan Guarantee (OAR 813-043);
- (m) Homeownership Assistance (OAR 813-044);
- (n) Housing Development Account Program (813-045);
- (o) Emergency Housing Program (OAR 813-046);
- (p) Housing Revitalization Program (OAR 813-048);
- (q) Disabled Housing Program (OAR 813-060);
- (r) Home Improvement Loan Program (OAR 813-070);
- (s) Mortgage Credit Certificate Program (OAR 813-080);
- (t) Low-Income Housing Tax Credit (OAR 813-090);
- (u) Oregon Lender’s Tax Credit: Low-Income Housing Project Certification (OAR 813-110);
- (v) Home Investment Partnerships (OAR 813-120);
- (w) HELP Program (OAR 813-130);
- (x) Incentive Fund ((OAR 813-140);
- (y) Subsidized Development Visitability Program (OAR 813-310);
- (z) General Guarantee Program (OAR 813-350).

(3) Pursuant to ORS 456.555(9), the Housing and Community Services Department is to establish from time to time, by Administrative Rule, the threshold property purchase price at which a single-family home ownership loan on property must be submitted by the Department to the State Housing Council for approval or disapproval. Presently, the threshold property purchase price for single-family home ownership that obligates the Department to obtain State Housing Council review and approval of a proposed single-family loan is that purchase price which, when reduced by costs of purchase other than the Department loan, is equal to or greater than \$190,000.

(4) “Acquisition Loan” means a Loan for the purpose of financing the purchase of an existing Project.

(5) “Act” means ORS 456.515 through 456.725 and, given the context, also may include ORS 458.005 through 458.740, 90.800 through 90.840, and 91.886.

(6) “Approved Lender” means any person authorized to engage in the business of making loans of the general character of Program Loans, who meets the qualifications for an Approved Lender set forth in the applicable Program rules and who contracts with the Department to make Program Loans.

(7) “Approved Servicer” means any person authorized to engage in the business of servicing loans of the general character of Program Loans, who meets the qualifications for an Approved Servicer set forth in the applicable Program rules and who contracts with the Department to service Program Loans.

(8) “Bond” means any bond, note or other evidence of indebtedness issued to obtain funds to provide financing for a Program of the Department as provided in the Act or as further defined by statute.

(9) “Borrower” means an Eligible Borrower who has received a Program Loan.

(10) “Break-Even Occupancy” means the point in time when a Project’s monthly rental income meets its monthly operating expenses and debt service.

(11) “Commitment” means the written conditional obligation of the Department to make, purchase, service or sell a Program Loan.

(12) “Community Service Programs” are defined in subsection (2) of this section.

(13) “Contingency Escrow Account” means an account not to exceed 3% of the initial principal amount of the Program Loan, established by the Sponsor in the form of a savings account, time certificate of deposit, or irrevocable letter of credit assigned to the Department.

(14) “Cooperative” is a consumer housing entity formed according to the provisions of ORS Chapter 62, as amended.

(15) “Department” means the Housing and Community Services Department of the State of Oregon established pursuant to ORS 456.555

originally enacted by Enrolled House Bill 3377, Chapter 739, Oregon Laws 1991.

(16) “Director” means the chief administrative officer of the Housing and Community Services Department established pursuant to ORS 456.555(3).

(17) “Elderly Household” means a household residing in the State of Oregon whose head is over the age of 58.

(18) “Eligible Borrower” means a person who satisfies the criteria to receive a Program Loan as set forth in the applicable Program rules, statute or Department orders.

(19) “Escrow Payments” means the monthly payments made by the Sponsor or Borrower and placed in an escrow reserve account for the payment of property taxes, insurance premiums and reserve for replacements and other identified costs as required by the Department in accordance with the Program Loan.

(20) “Housing Council” or “State Housing Council” means that seven-member body established by ORS 456.567 which, with the advice of the Director, develops policies and approves or disapproves Department rules with respect to housing programs.

(21) “Housing Programs” are defined in subsection (2) of this section.

(22) “Lending Department” means a commercial bank, savings and loan association, savings bank, mortgage banker Federal Housing Administration, Farmers Home Administration or other department which provides permanent or construction mortgage loans.

(23) “Loan Agreement” means a written agreement, typically executed at Loan Closing, between the Department and a Sponsor establishing the terms of any Department Loan.

(24) “Loan Closing” means the disbursement by the Department of the Program Loan proceeds after recording of the Loan Documents.

(25) “Loan Documents” means the written agreements by and between the Sponsor and the Department or in favor of the Department, typically executed at Loan Closing, and generally including, but not necessarily limited to the Promissory Note, the Loan Agreement, the Trust Deed and the Regulatory Agreement.

(26) “Mobile Home Park” means a Project consisting of individual lots and mobile homes located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, and which complies with all ordinances, plans and codes in the area.

(27) “Operating Agreement and Declaration of Restrictive Covenants and Equitable Servitudes” or “Operating Agreement” means a written agreement typically executed at Loan Closing between the Department and the Sponsor of a Project under the Department’s Pass-Through Revenue Bond Program and regulating the use of revenues and operation of the Project, particularly with respect to tenant income and unit rent compliance by the Sponsor.

(28) “Person” means any natural or legal person.

(29) “Procedural Guide” means a manual of written procedures adopted by the Department to carry out a Program.

(30) “Program” means a statutorily authorized plan or order of business conducted by the Department.

(31) “Program Loan” means a loan made pursuant to a Program of the Department.

(32) “Qualified Insurer” means the Federal Housing Administration, the Veterans’ Administration, or any other person who is authorized to insure or guarantee payment of loans and who is approved by the Department.

(33) “Regulatory Agreement and Declaration of Restrictive Covenants and Equitable Servitudes” or “Regulatory Agreement” means a written agreement typically executed at Loan Closing between the Department and a Sponsor regulating the use of revenues and operation of the Project for which a Department Loan is issued, particularly pertinent with respect to compliance by the Sponsor with maintaining the status of any involved bond issue.

(34) “Rent-Up Reserve Account” means an account set up by the Sponsor and under the control of the Department to assure sufficient funds to pay operating expenses and debt service of the Project before Break-Even Occupancy.

(35) “Replacement Cost Reserve Account” means an account established to aid in extraordinary maintenance, repair and replacement of capital items of a Project.

(36) “Seed Money Advance” means an advance given to a Qualified Housing Sponsor to pay Preconstruction Costs.

(37) “Single-Family Residence” means a housing unit intended and used for occupancy by one household and the property on which it is located. This shall be real property located in the State of Oregon. A Single-

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Family Residence may include a single-family residence, condominium unit, a dwelling in a Planned Unit Development (PUD), or a mobile or manufactured home which has a minimum of 400 square feet of living space and a minimum width in excess of 102 inches and is of a kind customarily used at a fixed location.

(38) "Sponsor" means any Person meeting the legal, financial, credit and other qualifications to be the borrower on a Department Loan and to own and operate a Project as set forth in the applicable Program rules, statutes and Department orders.

(39) "Targeted Area" means an area in the state designated by the Department in compliance with the requirements of Section 143(j) of the Internal Revenue Code of 1986, as amended, and approved by the United States Departments of Treasury and Housing and Urban Development.

(40) "Trustee" means the State Treasurer or, with the approval of the Department, a private financial institution in Oregon acting pursuant to an indenture of trust or other appropriate instrument.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617
Stats. Implemented: ORS 456.515 - 456.720
Hist.: 1HD 7-1984, f. & ef. 9-4-84; HSG 1-1987(Temp), f. & ef. 2-5-87; HSG 5-1987, f. & ef. 3-10-87; Renumbered from 813-001-0006; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 5-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 1-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-005-0010 Submission of Information Regarding Attempts to Defraud the Department

Information submitted to the Department regarding any attempt to defraud the Department by a Person who has directly benefited from a Program Loan is exempt from disclosure under the Public Records Law, ORS 192.410 to 192.505, if the information meets the following tests:

- (1) It is submitted to the Department in confidence, and should reasonably be considered confidential.
- (2) It is not required to be submitted.
- (3) The Department is obliged in good faith not to disclose the information to the public.
- (4) The public interest would suffer by disclosing the information or the source of the information.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720
Hist.: 1HD 15-1980, f. & ef. 12-4-80; 1HD 7-1984, f. & ef. 9-4-84; HSG 1-1987(Temp), f. & ef. 2-5-87; HSG 5-1987, f. & ef. 3-10-87; Renumbered from 813-001-0010; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 5-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; Suspended by OHCS 1-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-005-0015 Conflicts of Interest

- (1) No public official, as defined by ORS 244.020(12), shall, during his or her tenure with the Department, have or obtain any direct financial interest in any loan application to the Department over which such official, serving in his or her official capacity, may exert an influence.
- (2) No person who has been a public official, as defined in ORS 244.020(9), shall for one year after his or her tenure with the Department, have or obtain any direct financial interest in any loan application over which such official, serving in his or her official capacity for the Department, exerted an influence.
- (3) The Department shall require any person submitting a loan application to it to disclose whether or not any past or present public official, as defined in ORS 244.020(12), who is presently or was within one year serving in a governmental capacity for the Department, has a direct financial interest in the loan application.
- (4) As used in this rule, "direct financial interest" means:
 - (a) Ownership interest in a development project proposed for funding by a Program Loan; or
 - (b) Salary or fee for employment, either as an employee or an independent contractor, for work on a development project proposed for funding by a Program Loan.
- (5) If the Department finds any person has violated section (1), (2), or (3) of this rule at any time during the loan processing, the Department may in its discretion deny the loan application, or refuse to advance loan funds.
- (6) The Department shall include with the application forms for Program Loans, information regarding the requirements of this rule and the sanctions in section (5) of this rule.
- (7) This rule shall be effective as to any direct financial interest acquired on or after March 11, 1983.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720

Hist.: 1HD 4-1983, f. 8-4-83, ef. 8-15-83; 1HD 7-1984, f. & ef. 9-4-84; HSG 1-1987(Temp), f. & ef. 2-5-87; HSG 5-1987, f. & ef. 3-10-87; Renumbered from 813-001-0015; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 5-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; Suspended by OHCS 1-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-005-0016 Waiver

The Director may waive or modify any requirements of OAR 813, division 005, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 91.886, 183 & 456.555
Stats. Implemented: ORS 90.800 - 90.840, 91.886, 456.515, 456.723 & 458.005 - 458.740
Hist.: OHCS 1-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-005-0020 Sale of Bonds

The Department may from time to time request the State Treasurer to issue Bonds to finance the Department's Programs. Bonds shall be issued in accordance with the provisions of ORS Chapter 286, and the Act.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720
Hist.: 1HD 2, f. 11-21-73, ef. 12-11-73; 1HD 7-1984, f. & ef. 9-4-84; Renumbered from 813-010-0600; HSG 1-1987(Temp), f. & ef. 2-5-87; HSG 5-1987, f. & ef. 3-10-87; Renumbered from 813-001-0030; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 5-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; Suspended by OHCS 1-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-005-0025 Purchase of Bonds

No Approved Lender, Mortgage Lender or Sponsor (including any related person, as defined in the **Internal Revenue Code**) may, pursuant to any arrangements, formal or informal, purchase Bonds in an amount related to the commitment or loan made to the person by the Department.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720
Hist.: 1HD 14, f. & ef. 10-3-77; 1HD 5-1983, f. & ef. 9-2-83; 1HD 7-1984, f. & ef. 9-4-84; Renumbered from 813-020-0055 and 813-70-060; HSG 1-1987(Temp), f. & ef. 2-5-87; HSG 5-1987, f. & ef. 3-10-87; Renumbered from 813-001-0040; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 5-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; Suspended by OHCS 1-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-005-0030 Land Use Goal Compliance and Comprehensive Plan Compatibility

(1) In order to approve a loan or grant or other housing assistance for a project, the Department shall find that the project complies with the statewide land use planning goals and is compatible with applicable acknowledged comprehensive plans and land use regulations. To make its compliance and compatibility finding, the Department shall follow the procedures in its state department coordination program which is hereby adopted by reference and shall also rely on one of the following:

- (a) A copy of the local land use permit or equivalent documentation from the city or county planning department or the local governing body that the project has received land use approval;
- (b) A letter from the local planning department or governing body stating that the project in questions is permitted under the jurisdiction's comprehensive plan but does not require specific land use approval; or
- (c) Other information provided equivalent to subsection (a) or (b) of this section including but not limited to testimony presented to the Department or Housing Council from authorized representative from the affected city or county.

(2) In order to approve a loan or grant over \$100,000 for a project, the State Housing Council shall find that the project complies with the statewide land use planning goals and is compatible with the applicable acknowledged comprehensive plans and land use regulations. To make its compliance and compatibility findings the Housing Council shall follow the procedures in the Department's state department coordination program certified under ORS 197.180 and shall also rely on the land use approval information described in subsections (1)(a)-(c) of this rule.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 197.180 & 456.563(2)
Hist.: HSG 1-1989, f. & cert. ef. 4-7-89; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 5-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; Suspended by OHCS 1-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

Adm. Order No.: OHCS 2-2005(Temp)
Filed with Sec. of State: 8-4-2005
Certified to be Effective: 8-4-05 thru 1-31-06
Notice Publication Date:

ADMINISTRATIVE RULES

Rules Adopted: 813-001-0002, 813-001-0007, 813-001-0011

Rules Suspended: 813-001-0000, 813-001-0005, 813-001-0008, 813-001-0066, 813-001-0068, 813-001-0069, 813-001-0080, 813-001-0090

Rules Ren. & Amended: 813-001-0001 to 813-001-0003

Subject: 813-001-0002 sets forth the purpose of Division 813-001. Amendments and renumber of 813-001-0001 to 813-001-0003 defines the agencies or committees, established by statute, that have an advisory capacity to the department. 813-001-0011 adds waiver language already provided for by statute.

813-001-0007 establishes the threshold for loans requiring State Housing Council review arising under ORS 456.515 to 456.726. HB 2054 removed from statute the \$150,000 threshold for single-family loan review and allows the department, with Housing Council approval, to enact administrative rules establishing the single-family loan review threshold. 813-001-0007 establishes the single-family loan review threshold as the purchase price, which when reduced by costs of purchase other than the Department loan, is equal to or greater than \$190,000.

813-001-0000; 813-001-0005; 813-001-0008; 813-001-0066; 813-001-0068; 813-001-0069; 813-001-0080 and 813-001-0090 are administrative corrections intended to remove unnecessary language, already provided by statute, from department rules.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-001-0000

Notification

Before the adoption, amendment, or repeal of any rule, the Housing and Community Services Department shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days before the effective date of the intended action.

(2) By mailing a copy of the notice to persons on the Department's mailing list established pursuant to ORS 183.335(7).

(3) By mailing a copy of the notice to:

(a) The United Press International;

(b) Associated Press; and

(c) The Capitol Press Room.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720

Hist.: 1HD 4, f. & ef. 3-15-76; 1HD 11, f. & ef. 9-20-76; 1HD 15-1980, f. & ef. 12-4-80; 1HD 6-1981, f. & ef. 3-31-81; 1HD 7-1984, f. & ef. 9-4-84; HSG 3-1989(Temp), f. & ef. 6-8-89; HSG 4-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; Suspended by OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-001-0002

General Purpose

OAR chapter 813, division 001, is promulgated to provide an overview of the Housing and Community Services Department and related entities and to describe general procedural rules with respect to the review and approval or disapproval by the State Housing Council of certain housing grants, loans and other funding awards proposed to it by the Director of the Department.

Stat. Auth.: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617

Stats. Implemented: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617

Hist.: OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-001-0003

Organization Description

(1) The Housing and Community Services Department is a state housing finance department, and also serves as the central source of housing data and program information in the state. The Department, established pursuant to ORS 456.555, operates under the direction and control of a Director appointed by the Governor. The primary duties and powers of the Director are described in ORS 456.555(3), (4), (5) and (7). The primary housing-related powers and duties of the Department, including its bonding authority, are more specifically set out in ORS 456.515 through 456.725 and 90.630. The Department also administers other housing and community services programs. These Department powers and duties are primarily set out in ORS 458.005 through 458.740.

(2) The State Housing Council is established under ORS 456.567. The Council consists of seven members appointed by the Governor subject to confirmation by the Senate. The Council advises the Department regarding its biennial budget and, with the advice of the Director, develops policies to aid in stimulating and increasing the supply of housing for lower-income Oregonians. The Council, with the advice of the Director, approves or disapproves rules and standards for Department housing programs. It also approves or disapproves certain housing loans, grants and other housing funding awards proposed by the Director. Council powers and duties are primarily set out in ORS 456.555(6)(a), 456.567(6) and 456.571.

(3) The Low Income Energy Assistance Advisory Committee is established under ORS 458.515. Members are appointed by the Director based on a demonstrated interest in and knowledge of low income energy assistance programs. The Committee is required to meet at least twice a year to advise and assist the Department regarding low income program rules, policies and programs provided for under ORS 458.510.

(4) The Hunger Relief Task Force is established under ORS 458.532. It consists of 24 members appointed in a manner consistent with Subsection (1) ORS 458.532. The Task Force is required to meet at least once a month. Its duties and powers are enumerated in ORS 458.545 and, among other things, include serving as the designated state unit on hunger and as an advocate for hungry persons.

(5) The Community Development Incentive Advisory Board is established pursuant to ORS 458.710. It consists of 15 members appointed in a manner consistent with Subsection (1) of ORS 458.710. The duties and powers of the Board are enumerated in ORS 458.715 and, among other things, include developing community development program guidelines, reviewing applications for funding from the Community Development Incentive Project Fund, making funding recommendations to the Director, and reviewing proposals for cooperative agreements or joint projects between the Department and other agencies.

(6) The Oregon Commission on Voluntary Action and Service is established pursuant to ORS 458.555. It consists of 15-25 members appointed in a manner consistent with ORS 458.555 and in accordance with membership requirements enumerated in ORS 458.558 and 458.563. The duties and powers of the Commission are enumerated in ORS 458.568 and ORS 458.570 and, among other things, includes the development of programs and oversight of administration of programs granted to Oregon by the Corporation for National and Community Service under the National and Community Service Trust Act of 1993; development of a statewide plan to meet or exceed the Oregon benchmark on volunteerism; engaging citizens in service, strengthening communities, and creating statewide access for all Oregon citizens to a variety of volunteer opportunities; promoting the value of service learning as an educational strategy in the kindergarten through higher educational systems; and promoting recognition of volunteerism and service.

(7) The Community Action Directors of Oregon means an organization described in ORS 458.505. Pursuant to ORS 456.555, the Community Action Directors of Oregon advises the Department and the State Housing Council on community service programs as determined by the Director and as set forth in ORS 458.505. Pursuant to ORS 458.505, the Community Action Directors of Oregon delivers antipoverty programs in Oregon, including the Community Services Block Grant, Low Income Energy Assistance Program, and State Department of Energy Weatherization Program.

Stat. Auth.: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617

Stats. Implemented: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617

Hist.: 1HD 7-1984, f. & ef. 9-4-84; HSG 11-1987, f. & ef. 4-16-87; HSG 3-1989(Temp), f. & ef. 6-8-89; HSG 4-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; Renumbered from 813-001-0001, OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-001-0005

Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Housing and Community Services Department adopts the Attorney General's Model Rules of Procedure including amendments effective March 3, 1988.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Housing and Community Services Department.]

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.515 - 456.720

Hist.: 1HD 1, f. 10-15-73, ef. 11-16-73; 1HD 2-1978, f. & ef. 7-24-78; 1HD 10-1980, f. & ef. 4-30-80; 1HD 12-1983, f. & ef. 12-20-83; 1HD 7-1984, f. & ef. 9-4-84; 1HD 3-1986, f. & ef. 10-13-86; HSG 2-1989, f. & cert. ef. 5-12-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; Suspended by OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

ADMINISTRATIVE RULES

813-001-0007

Procedural Rules for State Housing Council Review and Determination with Respect to Certain Housing Loan, Grant and Other Funding Award Proposals by the Director

(1) The Director or the Director's Department designees shall submit proposed loan, grant or other funding award proposals arising under ORS 456.515 to 456.725 programs to the State Housing Council for review and approval if the proposal is for:

(a) A proposed single-family loan on property with a purchase price which, when reduced by costs of purchase other than the Department loan, is equal to or greater than \$190,000;

(b) A housing loan other than a single-family homeownership loan, if the loan amount exceeds \$100,000; or

(c) A housing grant or other housing funding award, if the grant or other funding award amount exceeds \$100,000.

(2) The Council shall review each loan, grant or other funding award proposal submitted by the Director under this section and approve or disapprove the loan, grant or other funding award proposal. An approval by the Council of any loan, grant or other funding award may be partial or in full and may contain any conditions not consistent with law that the Council may prescribe.

(3) Formal Council review of loan, grant or other funding award proposals under this section shall be conducted in a public meeting, whether in person or by telephone or other electronic means. The Council may go into executive session, as appropriate, in the course of its review. A Council public meeting notice, when required by ORS 192.640, shall include notice of the loan, grant or other funding award proposal review, the names of the applicants, and the subject of the loan, grant or funding award proposal. The Council also shall provide notice of any loan, grant or other funding award proposal review to the loan, grant or other funding award applicant not less than five days before the review hearing.

(4) The public may contact the Department for available information with respect to prospective Council review of loan, grant or other funding award proposals by telephoning 503.986-2000 or addressing written correspondence to: Oregon Housing and Community Services Department, 725 Summer Street NE, Suite B, Salem OR 97301.

(5) Procedural rules addressing other programs administered by the Department are included, where applicable, in other divisions of this chapter. Additional procedural rules with respect to the review and approval of housing grants, loans and other funding awards also may be included, where applicable, in other divisions of the chapter.

Stat. Auth.: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 813, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617
Stats. Implemented: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 813, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617
Hist.: OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-001-0008

Hearings

(1) To inform itself and the public, the Department may hold public hearings anywhere in the state and may limit the scope of such hearings.

(2) A Person aggrieved by a decision of the Housing Council or the Director may petition in writing for a rehearing or reconsideration of the decision under ORS 183.480. Such petitions must be filed prior to proceedings under ORS Chapter 183.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720
Hist.: 1HD 4-1979, f. & ef. 9-11-79; 1HD 6-1982(Temp), f. & ef. 9-20-82; 1HD 10-1982, f. & ef. 12-14-82; 1HD 11-1984, f. & ef. 9-4-84; 1HD 13-1984, f. & ef. 9-4-84; HSG 1-1987(Temp), f. & ef. 2-5-87; HSG 5-1987, f. & ef. 3-10-87; Renumbered from 813-030-0015 & 813-60-015; HSG 3-1989(Temp), f. & ef. 6-8-89; HSG 4-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; Suspended by OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-001-0011

Waiver

The Director may waive or modify any requirements of OAR 813, division 001, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 91.886, 183 & 456.555
Stats. Implemented: ORS 90.800 - 90.840, 91.886, 456.515, 456.725 & 458.005 - 458.740
Hist.: OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-001-0066

Subscription Fee for Monthly Status Report

(1) The Department publishes a monthly status report summarizing applications, and Projects in progress and Projects completed under the

Multi-Unit Housing Program and the Elderly and Disabled Housing Programs.

(2) The status report shall be distributed by mail to any person requesting it and the Department may collect an annual prepaid subscription fee of \$21. The Department may collect \$2 for a single issue.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720
Hist.: 1HD 1-1982, f. & ef. 1-4-82; 1HD 7-1984, f. & ef. 9-4-84; HSG 1-1987(Temp), f. & ef. 2-5-87; HSG 5-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & ef. 6-8-89; HSG 4-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; Suspended by OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-001-0068

Subscription Fee for Monthly Building Permit Year-to-Date Report

(1) The Department publishes the Oregon Monthly and Year-to-Date Building Permit Report, which lists building permits, mobile home registrations and condominium permits issued during the month, and for the year-to-date.

(2) The Oregon Monthly and Year-to-Date Building Permit Report shall be distributed by mail to any person requesting it upon payment of an annual subscription fee of \$20. Single issues are available for a fee of \$2.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720
Hist.: 1HD 7-1984, f. & ef. 9-4-84; 1HD 1-1986, f. & ef. 3-7-86; HSG 3-1989(Temp), f. & ef. 6-8-89; HSG 4-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; Suspended by OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-001-0069

Miscellaneous Charges

The Department may establish in its policies and procedures, charges in connection with photocopying or other reproduction of information, to offset Department costs in gathering, preparing, copying and transmitting such information. Such charges shall not exceed reasonable and necessary costs incurred by the Department.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720
Hist.: HSG 4-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; Suspended by OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-001-0080

Amendments

OAR chapter 813 may be amended in whole or in part by the Department with the approval of the Council where appropriate and pursuant to the Administrative Procedures Act. Such amendments shall not adversely affect the rights as set forth in the applicable indenture of trust of the holder of any Bond issued by the Department.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720
Hist.: 1HD 4-1979, f. & ef. 9-11-79; 1HD 7-1984, f. & ef. 9-4-84; Renumbered from 813-030-0065; HSG 3-1989(Temp), f. & ef. 6-8-89; HSG 4-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; Suspended by OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

813-001-0090

Separability

If any word, phrase, sentence, section, or part of OAR chapter 813 is finally judged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of these rules.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720
Hist.: 1HD 2, f. 11-21-73, ef. 12-11-73; 1HD 7-1984, f. & ef. 9-4-84; Renumbered from 813-010-0065; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; Suspended by OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06

Oregon State Lottery Chapter 177

Adm. Order No.: LOTT 6-2005(Temp)

Filed with Sec. of State: 7-27-2005

Certified to be Effective: 7-31-05 thru 8-1-05

Notice Publication Date:

Rules Amended: 177-040-0026

Subject: The Oregon Lottery has filed a temporary rule amendment to the above referenced rule. OAR 177-040-0028, which establishes the compensation rates to be paid to Lottery retailers for the sale of video lottery shares on video lottery terminals that offer both video poker and video line games, becomes effective at midnight on Sunday July 31, 2005. The Lottery adopted temporary compensation rates to allow the Lottery to begin installing and then testing the per-

ADMINISTRATIVE RULES

formance of video line games in retailer establishments before July 31, 2005. The Lottery business week begins at 5:00 a.m. each Sunday. In order to make an efficient transition to the new compensation rates, the Lottery has filed a temporary rule effective July 31, 2005 to clarify that the compensation rates set forth in OAR 177-040-0028 begin at 5:00 a.m. on July 31, 2005.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-040-0026

Retailer Compensation — Video Lottery Games

(1) The compensation amount the Lottery shall pay a retailer for the sale of video lottery game shares is calculated on a percentage of net receipts during a business year. "Net receipts" means the amount of money that is received at a retailer's premises from the sale of video lottery game shares after the payment of prizes. 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.

(2) **Temporary Compensation Rates.** To implement the sale of video lottery line game shares, Lottery adopts the following temporary compensation rates:

(a) Until 5:00 a.m. on July 31, 2005, the compensation rates for the sale of video lottery game shares on video lottery terminals that offer both video poker games as described in OAR 177-200-0070 and video line games as described in OAR 177-200-0075 are the compensation rates set forth in OAR 177-040-0027; and

(b) The compensation rates set forth in OAR 177-040-0028 for the sale of video lottery game shares on video lottery terminals that offer both video poker games as described in OAR 177-040-0070 and video line games as described in OAR 177-040-0075 begin at 5:00 a.m. on July 31, 2005.

(3) This rule expires on August 1, 2005.

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; LOTT 4-2005(Temp), f. & cert. ef. 5-10-05 thru 7-30-05; LOTT 6-2005(Temp), f. 7-27-05, cert. ef. 7-31-05 thru 8-1-05

Adm. Order No.: LOTT 7-2005(Temp)

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

Certified to be Effective: 8-28-05 thru 2-23-06

Notice Publication Date:

Rules Amended: 177-085-0005, 177-085-0015, 177-085-0020, 177-085-0025, 177-085-0030, 177-085-0035, 177-085-0065

Subject: In accordance with game changes promulgated by the Multi-State Lottery Association, the Powerball game rules are being updated with a new matrix and Power Play numbers which modify the odds of winning and the size of the jackpots. Annuitized payments will be paid in graduated payments (increasing each year).

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-085-0005

Definitions

The following definitions apply unless the context requires a different meaning.

(1) **"Drawing"** means the formal process of selecting winning numbers which determine the number of winners for each prize level of the game.

(2) **"Game Board"** or **"Boards"** means that area of the play slip which contains two sets of numbered squares to be marked by the player, the first set containing fifty-five squares, numbered 1 through 55, and the second set containing forty-two squares, numbered 1 through 42.

(3) **"Game Ticket"** or **"Ticket"** means a ticket produced by a terminal which contains the caption Powerball, one or more lettered game plays followed by the drawing date, the price of the ticket, a six digit retailer number and a serial number that is compatible with the Lottery's on-line operating system.

(4) **"Lottery"** means the Oregon State Lottery.

(5) **"Match 5 Bonus Prize"** means the bonus money won when a Grand Prize has reached a new high level and bonus prize monies have been declared by the Product Group under these rules. The Match 5 Bonus Prize does not include the original amount declared for the Match 5 Prize. For the purposes of the Match 5 Bonus Prize, Match 5 means matching five of the numbers drawn from the first set containing fifty-five numbers.

(6) **"MUSL"** means the Multi-State Lottery Association.

(7) **"MUSL Board"** means the governing body of the MUSL which is comprised of the chief executive officer of each Party Lottery.

(8) **"Party Lottery"** means a state lottery or lottery of a political subdivision or entity that participates in the Multi-State Lottery (MUSL) and, in the context of these Powerball Product Group rules, which has joined in selling the Powerball game.

(9) **"Play"** means the six numbers, the first five from a field of fifty-five numbers and the last one from a field of forty-two numbers which appear on a ticket as a single lettered selection and are to be played by a player in the game.

(10) **"Play Slip"** or **"Game Slip"** means the paper used in marking a player's game plays and containing one or more boards.

(11) **"Product Group"** means a group of lotteries which has joined together to offer a product pursuant to the terms of the Multi-State Lottery Agreement and the Group's own rules.

(12) **"Quick Pick"** means the random selection by the computer system of two-digit numbers that appear on a ticket and are played by a player in the game.

(13) **"Retailer"** means a person or entity authorized by the Lottery to sell lottery tickets.

(14) **"Set Prize"** means all prizes except the Grand Prize that are advertised to be paid by a single lump sum payment and, except in instances outlined in these rules, will be equal to the prize amount established by the MUSL Board for the prize level.

(15) **"Winning Numbers"** means the six numbers, the first five from a field of fifty-five numbers and the last one from a field of forty-two numbers, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket.

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

Stats. Implemented: ORS 461.200

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 10-1996, f. & cert. ef. 9-4-96; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LC 9-1997(Temp), f. & cert. ef. 11-7-97; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 4-2003(Temp), f. & cert. ef. 4-15-03 thru 10-10-03; LOTT 10-2003, f. & cert. ef. 6-30-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06

177-085-0015

Game Description

(1) Powerball is a five out of fifty-five numbers plus one out of forty-two numbers on-line lottery game, drawn every Wednesday and Saturday, which pays the Grand Prize, at the election of the player made in accordance with these rules or by a default election made in accordance with these rules, either on an annuitized pari-mutuel basis or as a single lump sum payment of the total amount held for this prize pool on a pari-mutuel basis. Except as provided in the rules, all other prizes are paid on a set lump sum basis.

(2) To play Powerball, a player shall select five different numbers, between 1 and 55 and one additional number between 1 and 42, for input into a terminal. The additional number may be the same as one of the first five numbers selected by the player.

(3) Tickets can be purchased either from a terminal operated by a retailer (i.e., a clerk-activated terminal) or from a terminal operated by the player (i.e., a player-activated terminal). If purchased from a retailer, the player may select a set of five numbers and one additional number by marking six numbered squares in any one game board on a play slip and submitting the play slip to the retailer, or by requesting "Quick Pick" from the retailer. The retailer will then issue a ticket, via the terminal, containing the selected set or sets of numbers, each of which constitutes a game play. Tickets can be purchased from a player-activated terminal by use of a touch screen or by inserting a play slip into the machine. Tickets may be purchased for up to four consecutive drawings.

(4) It is the sole responsibility of the player to verify the accuracy of the game play or plays and other data printed on the ticket. A ticket may not be voided or canceled by returning the ticket to the retailer or to the Lottery, including tickets that are printed in error. No ticket shall be returned to the Lottery for credit. The placing of plays is done at the player's own risk through the on-line retailer.

(5) The winning numbers for the Powerball game shall be determined at a drawing conducted under the supervision of the MUSL Board. The MUSL Board shall determine the frequency of Powerball game drawings. Winning numbers shall be selected at random with the aid of mechanical drawing equipment. The Lottery Director shall designate a Drawing Manager who shall review and randomly observe the drawings conducted by the MUSL Board.

Stat. Auth.: ORS 461.250 & OR Const. Art. XV, Sec. 4(4)

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Stats. Implemented: ORS 461.220

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 6-1993, f. & cert. ef. 7-2-93; LC 1-1994, f. 1-27-94, cert. ef. 2-1-94; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06

177-085-0020

Prize Claims

A ticket, subject to the validation requirements set forth in these rules, is the only proof of a game play or plays and the submission of a winning ticket to the Lottery or an authorized retailer as required by these rules is the sole method of claiming a prize or prizes. A play slip or a copy of a ticket has no pecuniary or prize value and does not constitute evidence of ticket purchase or of numbers selected. A terminal produced paper receipt has no pecuniary or prize value and does not constitute evidence of ticket purchase or of numbers selected.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.220

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06

177-085-0025

Prize Pool

(1) The prize pool for all prize categories shall consist of up to 49.3% of each drawing period's sales, including tax, that remain after funding the prize reserve accounts to the amounts established by the Product Group. Any amount remaining in the prize pool at the end of this game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with state law.

(2) Two percent of sales, including tax, shall be placed in trust in one or more prize reserve accounts until the prize reserve accounts reach the amounts designated by the Product Group. Once the prize reserve accounts exceed the designated amounts, the excess shall become part of the Grand Prize pool. Any amount remaining in a prize reserve account at the end of this game shall be carried forward to a replacement prize reserve account or expended in a manner as directed by the Product Group in accordance with state law.

(3) The Grand Prize shall be determined on a pari-mutuel basis. Except as provided in these rules, all other prizes awarded shall be paid as set lump sum prizes with the following expected prize payout percentages: [Table not included. See ED. NOTE.]

(a) The prize money allocated to the Grand Prize category shall be divided equally by the number of game boards winning the Grand Prize.

(b) The prize pool percentage allocated to the set prizes (the single lump sum prizes of \$200,000 or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw. If the total of the set prizes awarded in a drawing exceeds the percentage of the prize pool allocated to the set prizes, then the amount needed to fund the set prizes awarded shall be drawn from the following sources, in the following order:

(A) The amount allocated to the set prizes and carried forward from previous draws, if any;

(B) An amount from the set Prize Reserve Account, if available, not to exceed \$25,000,000.00 per drawing.

(c) If, after these sources are depleted, there are not sufficient funds to pay the set prizes awarded, then the highest set prize shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, then the next highest set prize shall become a pari-mutuel prize. This procedure shall continue down through all set prize levels, if necessary, until all set prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning plays in proportion to their respective prize percentages.

(d) The prize money allocated to the Match 5 Bonus Prize shall be divided equally by the number of game plays winning the Match 5 prize when a game play wins the new high jackpot amount.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.220

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 17-1988(Temp), f. & cert. ef. 6-2-88; LC 18-1988, f. & cert. ef. 6-28-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 4-1993, f. & cert. ef. 4-2-93; LC 11-1995, f. 10-30-95, cert. ef. 11-1-95; LC 10-1996, f. & cert. ef. 9-4-96; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06

177-085-0030

Probability of Winning

The following table sets forth the probability of winning and the probable distribution of winners in and among each prize category, based upon the total number of possible combinations in Powerball: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.220

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06

177-085-0035

Prize Payment

(1) Grand prizes shall be paid, at the election of the player made no later than 60 days after validation of the prize, with either a per winner annuity or single lump sum payment. If the payment election is not made by the player within 60 days after validation, then the prize shall be paid as an annuity prize. The election to take the single lump sum payment may be made at the time of validation of the prize claim or within 60 days thereafter. An election made after validation is final and cannot be revoked, withdrawn or otherwise changed. Shares of the Grand Prize shall be determined by dividing the amount available in the Grand Prize pool equally among all winners of the Grand Prize. Winner(s) who elect a lump sum payment shall be paid their share(s) in a single lump sum payment. The annuitized option prize shall be determined by multiplying a winner's share of the Grand Prize pool by the MUSL annuity factor. (Application of the MUSL annuity factor generally is anticipated to result in the Grand Prize winner who elects a single lump sum payment receiving an amount that roughly approximates one-half of the advertised jackpot amount. The actual single lump sum payment amount will vary as a function of the MUSL annuity factor determined as described in subsection (5) of this rule.) The MUSL annuity factor is determined by the best total securities price obtained through a competitive bid of qualified, pre-approved brokers made after it is determined that the prize is to be paid as an annuity prize or after the expiration of 60 days after the winner becomes entitled to the prize. Neither MUSL nor the party lotteries shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to MUSL. In certain instances announced by the Product Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to subsection (5) of this rule. If individual shares of the cash held to fund an annuity are less than \$250,000, the Product Group, in its sole discretion, may elect to pay the winners their share of the amount held in the Grand Prize pool. All annuitized prizes shall be paid annually in thirty payments with the initial payment being made directly with available funds, to be followed by twenty-nine payments funded by the annuity. All annuitized prizes shall be paid annually in thirty graduated payments (increasing each year) by a rate as determined by the Product Group. Prize payments may be rounded down to the nearest \$1,000. Annual payments after the initial payment shall be made by the lottery on the anniversary date of the first payment or if such date falls on a non-business day, then the first business day following the anniversary date of the selection of the jackpot winning numbers. Funds for the initial payment of an annuitized prize or the lump sum payment prize shall be made available by MUSL for payment by the Party Lottery which sold the winning ticket by the 15th calendar day (or the next banking day if the fifteenth day is a holiday) following the drawing. If necessary, when the due date for the payment of a prize occurs before the receipt of sufficient funds in the prize pool trust to pay the prize, then the transfer of funds for the payment of the full lump sum payment amount may be delayed pending receipt of funds from the party lotteries. A state may elect to make the initial payment from its own funds after validation, with notice to MUSL. In the event of the death of a lottery winner during the annuity payment period, the Product Group, in its sole discretion, upon the petition of the estate of the lottery winner (the "Estate") or the persons identified on the winner's Beneficiary Designation form (BDF), whichever is applicable, to the state lottery of the state in which the deceased lottery winner purchased the winning ticket, and subject to applicable federal, state, or district laws, may make payment to the Estate or the designated beneficiary of the discounted present value of the annuitized prize payments. If the Product Group makes such a determination, then securities and/or amounts held to fund the deceased lottery winner's annuitized prize may be distributed to the Estate or the persons on the BDF. The identification of the securities, if

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any, to fund the annuitized prize shall be at the sole discretion of the Product Group.

(2) All low-tier cash prizes (all prizes except the Grand Prize) shall be paid directly through the Lottery that sold the winning ticket. The Lottery may begin paying low-tier prizes after receiving authorization to pay from the MUSL central office.

(3) Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first payment to the winner or winners. Prizes other than the Grand Prize which, under these rules, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

(4) If the Grand Prize is not won in a drawing, the prize money allocated for the Grand Prize shall roll over and be added to the Grand Prize pool for the following drawing. If a new high Grand Prize is not won in a drawing, the prize money allocated for the Match 5 Bonus Prizes shall roll over and be added to the Match 5 Bonus Prize pool for the following drawing.

(5) The Product Group may offer guaranteed minimum Grand Prize amounts or minimum increases in the Grand Prize amount between drawings or make other changes in the allocation of prize money where the Product Group finds that it would be in the best interest of the game. If a minimum Grand Prize amount or a minimum increase in the Grand prize amount between drawings is offered by the Product Group, then the Grand Prize amount shall be determined as follows. If there are multiple Grand Prize winners during a single drawing, each selecting the annuitized option prize, then a winner's share of the guaranteed annuitized Grand Prize shall be determined by dividing the guaranteed annuitized Grand Prize by the number of winners. If there are multiple Grand Prize winners during a single drawing and at least one of the Grand Prize winners has elected the annuitized option prize, then the best bid submitted by MUSL's pre-approved qualified brokers shall determine the cash pool needed to fund the guaranteed annuitized Grand Prize. If no winner of the Grand Prize during a single drawing has elected the annuitized option prize, then the amount of the cash in the Grand Prize pool shall be an amount equal to the guaranteed annuitized amount divided by the average annuity factor of the most recent three best quotes provided by MUSL's pre-approved qualified brokers submitting quotes. In no case shall quotes be used which are more than two weeks old, and if less than three quotes are submitted, then MUSL shall use the average of all quotes submitted. Changes in the allocation of prize money shall be designed to retain approximately the same prize allocation percentages, over a year's time, set out in these rules. Minimum guaranteed prizes or increases may be waived if the alternate funding mechanism set out in OAR 177-085-0025(3)(b) or (c) becomes necessary.

(6) The holder of a winning ticket may win only one prize per board in connection with the winning numbers drawn, and shall be entitled only to the prize won by those numbers in the highest matching prize category.

(7) Claims for all prize categories, including the Grand Prize, shall be submitted within one year after the date of the drawing in accordance with these rules.

(8) When the Grand Prize reaches a new high annuitized amount, through a procedure as determined by the Group, the maximum amount to be allocated to the Grand Prize pool from the Grand Prize percentage shall be the previous high amount plus \$25 million (annuitized) or as otherwise set by the Group. Any amount of the Grand Prize percentage which exceeds the \$25 million (annuitized) increase shall be added to the Match 5 Bonus Prize Pool. The Match 5 Bonus prize pool is hereby created, and shall accumulate until the Grand Prize is won, at which time the Match 5 Bonus prize pool shall be divided equally by the number of game boards winning the Match 5 prize. If there are no Match 5 winners on the draw when the new high Grand Prize is won, then the Match 5 Bonus prize pool shall be divided equally by the number of game plays winning the Match 4+1 prize.

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

Stats. Implemented: ORS 461.20

Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 8-1992, f. & cert. ef. 7-23-92; LC 4-1993, f. & cert. ef. 4-2-93; LC 10-1996, f. & cert. ef. 9-4-96; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 4-2003(Temp), f. & cert. ef. 4-15-03 thru 10-10-03; LOTT 10-2003, f. & cert. ef. 6-30-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06

177-085-0065 Power Play

(1) Power Play is an optional, limited extension of the Powerball Game described in OAR Division 85. The Lottery Director, in the Lottery

Director's sole discretion and based on agreements with MUSL, is authorized to initiate and terminate the Power Play option.

(2) Power Play multiplies the amount of any of the cash Set Prizes (the cash prizes normally paying \$3 to \$200,000) won in a drawing. The Grand Prize jackpot is not a Set Prize and will not be multiplied. Match 5 Bonus Prizes are awarded independent of the Power Play option and are not multiplied by the Power Play multiplier.

(3) A qualifying Power Play option play is any single Powerball Play for which the player selects the Power Play option on either the Play Slip or by selecting the Power Play option through a clerk-activated or player-activated terminal, pays one extra dollar for the Power Play option play, and which is recorded at the Party Lottery's central computer as a qualifying play.

(4) A qualifying play which wins one of the cash Set Prizes will be multiplied by the number selected (2 through 5), in a separate random selection announced during the official Powerball drawing show.

(5) MUSL will conduct a separate random "Power Play" drawing and announce results during each of the regular Powerball drawings. During each random "Power Play" drawing, one number from sixteen possible numbers will be selected. The numbers available for selection are 2, 2, 2, 3, 3, 3, 3, 4, 4, 4, 4, 5, 5, 5, and 5. The Powerball Group may change one or more of these multiplier numbers for special promotions from time to time.

(6) Except as provided in these rules, all prizes awarded shall be paid as lump sum set prizes. Instead of the Powerball set prize amounts, qualifying Power Play option plays will pay the amounts shown below when matched with the Power Play number drawn: [Table not included. See ED. NOTE.]

(7) The following table sets forth the probability of the various Power Play numbers being drawn during a single Powerball drawing: [Table not included. See ED. NOTE.]

(8) The prize pool percentage allocated to the Power Play set prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

(9) If the total of the original Powerball set prizes and the multiplied Power Play set prizes awarded in a drawing exceeds the percentage of the prize pools allocated to the set prizes, then the amount needed to fund the set prizes (including the multiplied set prizes) awarded shall be drawn from the following sources, in the following order:

(a) The amount allocated to the set prizes and carried forward from previous draws, if any;

(b) An amount from the Powerball Set-Prize Reserve Account, if available in the account, not to exceed twenty-five million dollars (\$25,000,000) per drawing; and

(c) If, after these sources are depleted, there are not sufficient funds to pay the set prizes awarded (including multiplied prizes), then the highest set prize (including the multiplied prizes) shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, then the next highest set prize, including the multiplied prize, shall become a pari-mutuel prize. This procedure shall continue down through all set prizes levels, if necessary, until all set prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning plays in proportion to their respective prize percentages.

[ED. NOTE: Tables referenced are available from the agency.]

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

Stats. Implemented: ORS 461

Hist.: LOTT 3-2001(Temp), f. 3-1-01, cert. ef. 3-2-01 thru 8-29-01; LOTT 10-2001, f. 5-25-01, cert. ef. 5-29-01; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06

Oregon State Marine Board Chapter 250

Adm. Order No.: OSMB 4-2005
Filed with Sec. of State: 8-4-2005
Certified to be Effective: 8-4-05
Notice Publication Date: 6-1-05
Rules Amended: 250-020-0204

Subject: The Marine Board received a request from the Klamath Ranger District, U.S. Forest Service, to consider a 10 mph speed limit for boats on Fourmile Lake in the Fremont-Winema National Forest in Klamath County. The lake is predominantly used as a small-boat fishing lake since there is no developed access for large boats. The lake has been posted 10 mph for many years, but no actual rule

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was ever put in place. Because of underwater stumps and numerous floating tree hazards as well as a lack of facilities suitable for large boat launching, District Ranger requested an official rule for what has been established practice for many years.

Rules Coordinator: Jill E. Andrick—(503) 373-1405, ext. 243

250-020-0204

Boat Operations in Klamath County

(1) No person shall operate a motorboat in excess of 10 mph on Fourmile Lake.

(2) No person shall operate a motorboat in excess of “Slow-No Wake” (Maximum 5 mph) on the following waters:

(a) Spring Creek, except within Collier State Park;

(b) Williamson River, within 200 feet of any dock or launch ramp from mouth to State Highway 97.

(3) No person shall operate a motorboat for any purpose on Spring Creek within the boundaries of Collier State Park.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 45, f. 8-25-69; Renumbered from 250-020-0024; OSMB 8-1998, f. & cert. ef. 5-21-98; OSMB 12-1998, f. 7-15-98, cert. ef. 8-1-98; OSMB 4-2003, f. & cert. ef. 6-12-03; OSMB 4-2005, f. & cert. ef. 8-4-05

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Oregon University System, Western Oregon University Chapter 574

Adm. Order No.: WOU 2-2005

Filed with Sec. of State: 8-4-2005

Certified to be Effective: 8-4-05

Notice Publication Date:

Rules Amended: 574-031-0000, 574-031-0010, 574-031-0020, 574-031-0030, 574-031-0040, 574-032-0000, 574-032-0010, 574-032-0020, 574-032-0030, 574-032-0040, 574-032-0050, 574-032-0060, 574-032-0070, 574-032-0080, 574-032-0090, 574-032-0100, 574-032-0110, 574-032-0120, 574-032-0130, 574-032-0150, 574-032-0160, 574-050-0005

Subject: Amendments will allow for increases, additions, and revisions of special course fees and general services fees and updates to Division 31 and 32 for student conduct and the student judicial process.

Rules Coordinator: Debra L. Charlton—(503) 838-8175

574-031-0000

Introduction

(1) Western Oregon University has a fundamental interest in the conduct and education of its students. The development of a student through his or her University experience involves a fusion of the learning process with the development of a coherent and consistent system of ethics, as well as adherence to standards of behavior created and accepted by the University community.

(2) All members of the University community have a responsibility to maintain a level of behavior that reflects favorably upon the person and the University. The University requires that all students be responsible for their own conduct. The University expects students who live on and off campus to abide by local, state, and federal laws as well as University policies, procedures, and regulations, including this Code of Student Responsibility.

(3) The Code of Student Responsibility will be applied impartially and without regard to age, disability, ethnic background, gender, race, religious or political affiliation, sexual or gender orientation.

(4) The application of the standards within this Code of Student Responsibility applies to individuals, clubs, educational activity groups, other student groups, and any individual student who is registered for one or more credit hours, including on-line courses, is enrolled in a special non-credit program approved by the University, or who has been accepted for admission, housing, financial aid, or any other service or benefit provided by the University which requires student status.

(5) This Code of Student Responsibility was adopted on September 1, 2005, became effective September 1, 2005 and supersedes all other previous conduct codes.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 3-1982, f. & ef. 10-20-82; WOSC 3-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 4-1993, f. & cert. ef. 10-21-93; WOSC 2-1996, f. & cert. ef. 11-12-96; Renumbered from 574-030-0046; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-031-0010

Definitions

(1) The term “**University**” means Western Oregon University, or any part or division within Western Oregon University.

(2) The term “**Adjudication**” means a method of resolving allegations of student misconduct which employs a fact-finding, impartial adjudicator, or judge, to render a binding decision in the matter.

(3) The terms “**Administration or Staff Person**” mean any person who holds a current non-academic appointment or classified position at the University.

(4) The term “**Advisor**” means any person who has elected to advise a charged student, witness, or complainant within a student conduct hearing.

(5) The term “**Appeals Body**” means any person or group charged with hearing appeals through this Code of Student Responsibility (e.g., the Vice President for Student Affairs).

(6) The term “**Business Visitor**” means any person on the University’s property who has a legitimate interest or focus of business with the University, and who is not a member of the University community.

(7) The term “**Campus**” means any property owned or controlled by the University.

(8) The term “**Charged Student**” means any student charged with a violation of this Code of Student Responsibility.

(9) The term “**Code**” means this Code of Student Responsibility.

(10) The term “**Committee**” means the University Student Conduct Committee.

(11) The term “**Complainant**” means any person whether a member of the University community or not, who has filed a complaint of alleged misconduct with Public Safety or with the Campus Judicial Program concerning a student.

(12) The term “**Coordinator**” means the Coordinator of Campus Judicial Affairs.

(13) The term “**Coordinator of Campus Judicial Affairs**” means that person designated by the Vice President for Student Affairs as the administrator of the University’s Campus Judicial Program.

(14) The term “**Disputant**” means any person who uses mediation within the Campus Judicial Program to resolve a conflict with another party or parties.

(15) The term “**Faculty**” means any person who holds a current academic appointment at the University.

(16) The term “**Mediation**” means a method of dispute resolution in which disputants utilize an impartial third party to assist the disputants to mutually resolve their conflict.

(17) The term “**Member of the University Community**” means any student, faculty, administration, or staff member at the University.

(18) The term “**Preponderance of the Evidence**” means that based on the information that is presented, the charged student has more likely than not, engaged in the charged misconduct.

(19) The term “**Student**” means a person who is enrolled at Western Oregon University or any person meeting the description in 574-031-0000(4).

(20) The term “**Student in Violation**” means any student found to be in violation of the Code of Student Responsibility through the Campus Judicial Program.

(21) The term “**University Sponsored On- or Off-Campus Event**” means any event in which at least one of the following applies:

(a) The University plans the event;

(b) The University pays all, or a part of, the cost of the event;

(c) The University sponsors the event;

(d) The University contributes any type of University owned or leased resources or equipment to the event;

(e) A University student, faculty, or staff person represents the University at the event;

(f) The event occurs within a University owned or leased property, or upon or within University owned or leased property, including any type of state vehicle; or

(g) The event occurs during the time frame specified on an approved sponsorship form.

(22) The term “**Victim**” means any person not charged with a violation of the Code who has been harmed by the behavior of a student found in violation of the Code. When referring to situations in which a charged student has not been found in violation of the Code of Student Responsibility, this person is referred to as an alleged victim.

(23) The term “**Visitor/Guest**” means a non-student or person not affiliated in any official way with Western Oregon University.

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(24) The term “**Witness**” means any person who has information which pertains to a case of alleged student misconduct.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 2-1996, f. & cert. ef. 11-12-96; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-031-0020

Jurisdiction

The regulations contained in the Code of Student Responsibility will apply to all matters affecting the University, including, but not limited to, events occurring during the time the University is in session, events occurring between academic terms, at University sponsored off-campus events, and any illegal behavior on or off the campus by Western students. Misconduct by non-students (business visitors, visitors/guests) whether on-campus or at an off-campus University sponsored event may result in a trespass from campus and/or any future WOU event. Allegations of student misconduct may be adjudicated within the University’s administrative Campus Judicial Program as well as within any off-campus criminal justice system regardless of whether the alleged behavior occurred on- or off-campus. Adjudication of allegations of student misconduct will occur expeditiously and sometimes before or concurrently with adjudication within an off-campus system of justice.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 3-1982, f. & ef. 10-20-82; WOSC 3-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 4-1993, f. & cert. ef. 10-21-93; WOSC 2-1996, f. & cert. ef. 11-12-96; Renumbered from 574-030-0047; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-031-0030

Specific Standards and Policies

The following list of prohibited forms of conduct is not all inclusive since it is not possible to list all potential violations. The University requires that all students behave in a manner congruent with established community standards and in a manner conducive to the development of the individual. Actions detrimental to the mission of the University and the legitimate activities of the academic community which constitute the University are in violation of this Code and may be subject to judicial procedures. Judicial action may be initiated by the University and educational and/or punitive sanctions may be assigned to any student or recognized student organization found participating in, attempting to participate in, or assisting others in participating in any of the following prohibited forms of conduct:

(1) Academic Dishonesty, which includes but is not limited to:

(a) Cheating — intentional use, or attempted use of artifice, deception, fraud, and/or misrepresentation of one’s academic work;

(b) Fabrication — unauthorized falsification and/or invention of any information or citation in any academic exercise;

(c) Facilitating dishonesty — helping or attempting to help another person commit an act of academic dishonesty. This includes students who substitute for other persons in examinations or represent as their own papers, reports, or any other academic work of others;

(d) Plagiarism — representing without giving credit the words, data, or ideas of another person as one’s own work in any academic exercise. This includes submitting, in whole or in part, prewritten term papers of another or the research of another, including but not limited to the product of commercial vendors who sell or distribute such materials, and the appropriation and/or use of electronic data of another person or persons as one’s own, or using such data without giving proper credit for it; or

(e) Any use or attempted use of electronic devices in gaining an illegal advantage in academic work in which the use of these devices is prohibited, and such devices include but are not limited to cell phones, PDAs, laptops, programmable calculators, removable disk drives, etc.

(2) Disorderly, lewd, indecent, or any other form of conduct, including actions resulting from drunkenness or illegal drug usage, which interferes with but is not limited to:

(a) The academic program of the University;

(b) The health and safety of members or visitors of the University community;

(c) The security of University owned or controlled property;

(d) The conduct of non-classroom activities (e.g., lectures, concerts, athletic events, and social functions); or

(e) Any other University activity or University sponsored activity or event.

(3) Harassment, which includes but is not limited to:

(a) Physical attack upon or interference with a person which prevents the person from conducting his or her customary or usual affairs, puts the

person in fear for his or her safety, or causes the person to suffer actual physical injury;

(b) Conduct less than a physical attack or interference with a person, such as hazing, harassing, or threatening action, which is intended to subject another person to offensive physical contact, physical injury, property damage, or cause physical impact, such as making threatening phone calls, sending or posting (electronically or otherwise) threatening letters, or the vandalism or misappropriation of a person’s property, or vandalism of a person’s room;

(c) Repeatedly contacting another person when:

(A) The contacting person knows or should know that the contact is unwanted by the contacted person; and

(B) The contact causes the contacted person reasonable apprehension of imminent physical harm or the contacting person knows or should know that the contact causes the contacted person mental anguish or distress and/or substantial impairment of the contacted person’s ability to perform the activities of daily life. As used in this context, “contacting” includes but is not limited to communicating with or remaining in the physical presence of the contacted person; or

(d) Sexual Harassment, whether or not it be by direct physical attack, as defined below. Sexual harassment includes, but is not limited to, sexual advances, requests or suggestions to engage in sexual conduct, and other physical and expressive behavior of a sexual nature when:

(A) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or education; or

(B) Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting the individual; or

(C) Such conduct has the purpose or effect of substantially interfering with an individual’s academic or professional performance or creates an intimidating or hostile employment, educational, or living environment.

(4) Detention or physical abuse, or conduct which threatens imminent bodily harm, or endangers the physical or emotional health of any person or oneself.

(5) Sexual Misconduct: Sexual Misconduct is unwanted sexual contact of any kind or the attempt to have unwanted sexual contact or the threat of such contact. Sexual contact shall be considered unwanted if no clear consent is freely given. Sexual contact is considered unwanted if the person is substantially impaired by alcohol or drugs or the person is otherwise without the physical or mental capacity to give clear consent. Sexual contact for the purpose of this rule means the touching of any private body part, including, but not limited to: genitalia, anus, buttocks, or breasts of another or causing such person to touch the genitalia, anus, buttocks, or breasts of another.

(6) Specifically insulting another person in his or her immediate presence with abusive words or gestures in a manner intended and likely to provoke a disorderly or violent response, whether or not it actually does.

(7) Possession, consumption, manufacturing, or sale of illegal drugs, alcoholic beverages, or any other controlled substance on University owned or controlled property, including:

(a) The furnishing of any controlled substance to a minor; or

(b) Being a minor in possession of alcohol by consumption or otherwise.

(8) Possession, consumption, manufacturing, or sale of illegal drugs off University owned or controlled property.

(9) Possession, consumption, sale, or distribution of alcoholic beverages or illegal drugs during the official portion of a University sponsored off-campus event as defined by the faculty or staff advisor.

(10) Acts which violate federal, state, or local laws.

(11) Violation of residence hall rules and procedures as listed in official residence hall publications.

(12) Tampering with fire safety equipment, generating a false alarm, or engaging in behavior that constitutes a fire or safety hazard.

(13) Failure to evacuate a University building after a fire alarm has sounded or other notice to evacuate has been given by a person authorized to give such notice.

(14) Possession or use of firearms, fireworks, explosives, dangerous chemicals, or other weapons or dangerous instruments on institutionally owned or controlled property.

(15) Obstruction or disruption of teaching, research, administration, judicial procedures, or other institutional activities, including the institution’s public service functions, other authorized activities, or University sponsored off-campus events.

(16) Malicious damage, misuse, or theft of institutionally owned property, or the property of any person where such property is located on

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institutionally owned or controlled property, or, regardless of location, is in the care, custody or control of the University.

(17) Failure by a person causing accidental damage to or removal of property to report to appropriate University staff or individual owner within a reasonable period of time following the accidental damage to or removal of University or personal property.

(18) Theft of property or services, or knowingly possessing or using stolen property or services including, but not limited to, furniture, equipment, university publications or any other form of media, and any other university owned property or services.

(19) Unauthorized entry to or use of institutional facilities, including buildings and grounds. This includes non-residential students who are in the residence hall area without an expressed invitation and/or remain overnight in a residence hall without permission from the Office of University Residences.

(20) Disruption of campus activities, including, but not limited to: student government, club, residence hall, or student leadership activities.

(21) Use of campus computers and/or network resources that includes, but is not limited to:

- (a) Unauthorized access to programs;
- (b) Alteration of computer records or data;
- (c) Theft or other abuse of computer time and/or overloading computing resources;
- (d) Violation of copyright laws;
- (e) Using a computer account not issued directly to the student; or
- (f) Any violation of the Acceptable Use of Computing Resources Policy.

(22) Refusal while on institutionally owned or controlled property, or at University sponsored on- or off-campus events, to comply with reasonable requests or directions from authorized University officials, including Public Safety officers, Resident Assistants, faculty and administrators.

(23) Misrepresentation of Matters of Fact, when any of the following is intended to gain a University benefit improperly, misrepresent a student's academic performance, or avoid a University sanction, including:

- (a) Knowingly furnishing false information to an authorized University official who is making an inquiry to carry out official University business;
- (b) Representing one's self as another person, including a University official, with or without that person's permission;
- (c) Altering, forging, improperly possessing, creating, distributing, or lending to another person a University identification card or instrument of identification unless authorized by the University or an authorized University official; or
- (d) Intentionally furnishing false academic information or concealing previous academic information in University application materials, assisting someone else in furnishing false information to the University, or using University documents for fraudulent purposes.

(24) Student groups representing themselves or an individual in the group representing him or herself as acting for or in behalf of the University in any commercial enterprise or in the solicitation or collection of funds for any purpose whatsoever without approval in advance by the appropriate University official or agency. This applies to all means of communication including, but not limited to, computer electronic mail, mail, telephone, facsimile, or other means.

(25) Violation of motor vehicle rules and regulations, or other policies adopted by the University or the State Board of Higher Education pertaining to the use of motor vehicles.

(26) Obstruction or disruption which interferes with the freedom of movement, either pedestrian or vehicular, on institutionally owned or controlled property.

(27) Publication, posting, or distribution on University property, or at authorized University activities, of material that violates copyright laws, postal regulations, University policies or rules, or any other law or statute.

(28) Hazing. Hazing includes initiation rites involving:

- (a) Physical abuse, pain, harm, or risk; or
- (b) Mental anguish, fear, or anxiety; or
- (c) Required performance of unwanted activities including but not limited to pranks, servitude, and physical contests; or
- (d) Any form of confinement or restraint.

(29) Contempt of adjudicative proceedings, which includes but is not limited to:

- (a) Conduct that interrupts the due course of proceedings in the presence of any hearing body created under this Code;
- (b) Violating the confidentiality of judicial proceedings administered under this Code;

(c) Knowingly giving false information at a judicial hearing or knowingly giving false information in a statement to be used as evidence at a judicial hearing, or knowingly giving false information to a campus judicial hearing officer;

(d) Failure by a witness to appear at a conduct hearing when requested to do so by a representative of the Campus Judicial Program;

(e) Knowingly and falsely initiating the judicial process, for instance, by filing a false complaint or report;

(f) Influencing or attempting to influence the impartiality of a hearing officer or a member of a campus judicial body or a witness;

(g) Harassment of a member of a campus judicial body or hearing officer prior to, during, and/or after a judicial proceeding; or

(h) Failure to comply with the terms of any judicial sanction imposed in accordance with the Code of Student Responsibility or mandated by the Residence Halls Judicial Board.

(30) Violation of published University policies, rules, or regulations.

(31) Inciting others to engage in any of the above prohibited forms of conduct or to perform any of the acts prohibited herein. Inciting means the advocacy of proscribed conduct which calls upon the person or persons addressed for imminent actions, and is coupled with a reasonable apprehension of imminent danger to the functions and purposes of the institution, including the safety of its students, faculty, and officials, and the protection of its property.

(32) Violation of OUS Higher Education policies.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 3-1982, f. & ef. 10-20-82; WOSC 3-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 4-1993, f. & cert. ef. 10-21-93; WOSC 2-1996, f. & cert. ef. 11-12-96; Renumbered from 574-030-0048; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-031-0040

Sanctions

The following order of sanctions implies neither degree of severity nor appropriateness of the sanction to the number of violations. Multiple sanctions may be assigned. Students will be responsible for any applicable costs for carrying out sanctions. The sanctions that may be assigned include, but are not limited to:

(1) Mediation: When charges of theft, vandalism, harassment, assault, or other harmful treatment are upheld through the adjudicative process, the student may be assigned to participate in a mediated meeting with the victim.

(2) Counseling: A student may be assigned to participate in a counseling intake session and to follow the recommendations of the intake counselor for further counseling sessions.

(3) Alcohol/Drug Assessments: A student may be assigned to complete an alcohol and/or drug evaluation and to follow the recommendations of the alcohol/drug counselor for treatment and/or education.

(4) Warning: The student or group is given written or verbal warning that his/her/their acts violated specified University regulations or policies and is advised that further violations may result in the assigning of more severe sanctions.

(5) Loss of Privileges: The student or group is denied specific privileges normally associated with student or group status, such as participation in recognized activities, use of University facilities or services, or living in University owned student residences.

(6) Community Service: The student or group must perform a designated number of hours in service to the community affected by his or her behavior.

(7) Restitution: The student or group must replace, restore, or pay for damaged, stolen, or misappropriated property.

(8) Disciplinary Probation: The student or group is placed on a probationary status, with or without loss of designated privileges, which may include the following: restriction on an individual's participation in co-curricular activities, receiving recognition through awards, and eligibility for scholarships and grants. Probation is a serious warning. Probation occurs for a specific period of time and/or prior to completion of certain specific activities.

(9) Negative Notation on Transcript: There may be an entry of information onto the student's permanent academic record regarding his or her violation of the Code of Student Responsibility. The entry may be permanent or for a specific period and must be noted as such on the transcript. After the expiration of the period of time specified, the notation will be removed upon written request by the student to the Coordinator of Campus Judicial Affairs.

(10) Suspension: The student or group is excluded from the University for a specific period and during that period may not enjoy aca-

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demographic privileges, participate in any University recognized function or group, or be allowed to reside in any University residence hall or building. If it is a group, the group may not function as a recognized group for a specific period of time.

(11) Expulsion: The student or group is permanently excluded from the University and may not enjoy academic privileges, participate in any University recognized function, or be allowed to reside in any University residence hall or building.

(12) Degree Revocation: The University may revoke a degree if a former student is found to have engaged in academic dishonesty in courses taken leading to the degree, or if the student is found to have engaged in actions that if known at the time the degree was awarded would have made the student unqualified for the degree.

(13) Deferred Sanction: The execution of any sanction authorized under this Code may be deferred. When deferring a sanction the following will apply:

(a) Assignment of a time limit for the deferred period;

(b) Notice given that subsequent violations of the Code or failure to comply with an existing sanction will terminate the deferment and result in automatic imposition of the original sanction. In the absence of such violation(s), the original sanction will be deemed completed at the end of the deferred period;

(c) The Coordinator of Campus Judicial Affairs or other hearing officer will hear allegations of a student's misconduct during the period of his or her deferred sanction within five business days during which the University is in session. The original sanction will take effect at the time the Coordinator of Campus Judicial Affairs or other hearing officer receives notice of the allegations pending this hearing. The Coordinator of Campus Judicial Affairs or other hearing officer may render a decision in the absence of the charged student. The original sanction will remain in effect unless the allegations are not upheld; or

(d) A student found in violation of the Code of Student Responsibility during his or her period of a deferred sanction may appeal the finding through this Code's normal appeal process. The sanction will remain in effect until resolution of the appeal.

(14) Sanction of Restraint: The student may not knowingly interact with another student or member of the University community specified by the sanctioning person or body. The restriction prohibits the restrained student from purposefully interacting with the protected person, over the phone, over any electronic source (e.g., e-mail), in person, and through the mail. Unless specifically stated otherwise in the sanction, the restriction does not prohibit the restrained student from unintentionally, or out of necessity, being in the same building or vicinity as the protected student (e.g., eating in the Dining Hall, attending the same class, etc.). The sanctioning person or body will determine the time limit for this sanction.

(15) Suspension of Student Status for Medical or Mental Health Reasons Pending Hearing Procedures: When evidence is received from an appropriate health professional which indicates that a student has a medical or mental health condition which creates a serious and imminent threat to the University community, to the student, or to the educational processes of the institution, the Vice President for Student Affairs will review that evidence and may suspend the student immediately pending a hearing. The hearing must occur within ten business days during which the University is in session. The student may be required to submit to psychological or physical assessment and to authorize release of such records to the Vice President for Student Affairs or other appropriate University officials in order to be re-enrolled in the University.

(16) Interim Sanction for Emergency Reasons: The Vice President for Student Affairs, the Coordinator of Campus Judicial Affairs, or their designee can invoke an interim, pre-hearing sanction when it is deemed necessary for the health or safety of the individual, other students, or University staff or faculty. In such instances where a student is assigned an interim sanction, the student will receive a hearing within ten working days in which the University is in session. Only when it is not possible to schedule necessary witnesses or obtain information significant to the case will the hearing be held more than ten working days in which the University is in session after assignment of the interim sanction. Interim sanctions include the following:

- (a) Expulsion;
- (b) Suspension;
- (c) Restraint;
- (d) Removal from Residence Halls; or
- (e) Holding Records.

(17) Placement of VP Hold or Judicial Hold: A VP Hold prohibits the student from conducting most forms of business with the University,

including receiving grades and sending or receiving transcripts. A Judicial Hold prohibits the student from registering for classes at the University. Holds are intended to be used with a time limit determined by the Coordinator of Campus Judicial Affairs or designee except in the case of expulsion when the VP Hold will be placed with no date of termination.

(18) Other Sanctions as assigned that are deemed appropriate to the educational/developmental nature of this Code and the student(s) involved. Failure by a student to complete the sanctions imposed can result in further judicial action and sanctions being assigned to the student. Appeals of sanctions can be made through the appeal process (see section 574-032-0120).

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 3-1982, f. & ef. 10-20-82; WOSC 3-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 4-1993, f. & cert. ef. 10-21-93; WOSC 2-1996, f. & cert. ef. 11-12-96; Renumbered from 574-030-0049; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0000

Introduction

(1) Western Oregon University's Campus Judicial Program holds the education of the student at its philosophical heart. This educational philosophy defines a structure for the Judicial Program which gives the charged student choices for resolving allegations of misconduct.

(2) The current hearing structure includes three options which vary in their degree of formality and philosophy. In order from least to most formal, they are: Hearing with Mediators, Hearing with the Coordinator of Campus Judicial Affairs, and Hearing with the Student Conduct Committee.

(3) The charged student first meets with the Coordinator of Campus Judicial Affairs who in turn helps direct the student to the proper arena for resolution of the allegation(s). The charged student always has the right to request that the hearing be held with a different party within the system. The party (individual or group) which hears the allegation(s) will dictate the formality of the proceedings, and all parties of the system, except for mediators, will retain equality in their jurisdiction and ability to assign sanctions.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 2-1996, f. & cert. ef. 11-12-96; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0010

Coordinator of Campus Judicial Affairs

(1) With authority given by the President of the University, the Vice President for Student Affairs will select a Coordinator of Campus Judicial Affairs who will have primary responsibility for administering the Campus Judicial Program. These duties will include, but not be limited to:

(a) Acting as a first response by meeting with the charged student to explain his or her due process rights under this Code;

(b) Gathering information concerning the student's alleged violation of this Code for the purpose of referring the case to the proper action which includes:

(A) Dropping the allegation(s),

(B) Holding the allegation(s) for further information,

(C) Sending the allegation(s) to a mediated meeting,

(D) Hearing the allegation(s) in the role of the Coordinator of Campus Judicial Affairs,

(E) Referring the allegation(s) to the Student Conduct Committee;

(c) Making findings concerning allegations of student misconduct and assigning sanctions related to those findings;

(d) Convening and coordinating the activities of all conduct hearings;

(e) Advising the Student Conduct Committee, managing Student Conduct Committee hearings, and protecting the rights of the charged student, the victim(s), and the complainant(s);

(f) Advising University officials and any hearing committees formed on the campus; or

(g) Reporting statistics to Campus Safety and Security for the Campus Security Act.

(h) Maintaining records pertaining to the activities of the Campus Judicial Program and providing the Vice President for Student Affairs with quarterly and annual reports of all judicial cases heard by mediators, the Coordinator of Campus Judicial Affairs, and the Student Conduct Committee. These reports will include information on the hearing authority, the nature of the violations, and the sanctions assigned. Appendices to these reports will include a summary of the minutes of the Student Conduct Committee and a report of the disposition of each judicial case.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

ADMINISTRATIVE RULES

Hist.: WOSC 3-1982, f. & ef. 10-20-82; WOSC 3-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 4-1993, f. & cert. ef. 10-21-93; WOSC 2-1996, f. & cert. ef. 11-12-96; Renumbered from 574-030-0050; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0020

Student Conduct Committee

(1) The President of the University appoints the Student Conduct Committee which consists of no fewer than three faculty members, three professional unclassified staff members to serve on non-academic related cases, and no fewer than six student members. The faculty and staff members will serve for three years on a rotational basis so two experienced members of each classification serve each year.

(2) The Coordinator of Campus Judicial Affairs solicits nominations for faculty appointments from the Department or Division Chairs and the Faculty Senate President by the end of each Spring term to fill whatever faculty vacancies exist.

(3) The Coordinator of Campus Judicial Affairs solicits nominations for staff members from the Administrative Support Council and non-academic departments by the end of each Spring term to fill whatever staff vacancies exist.

(4) The Coordinator may nominate a faculty and/or staff member to emeritus status when he or she leaves his or her rotation. This status recognizes outstanding service to the Committee by a faculty member. Members of this standing could still participate in Committee hearings, business meetings and social events, but would not be required to participate. Professors of this status also could serve the University and the Committee, including its advisor, in a counsel and historian role. Final appointment to this status is made by the President.

(5) The Coordinator of Campus Judicial Affairs solicits nomination for student appointments by the end of Spring term from the Residence Halls Association, the Associated Students of Western Oregon University (ASWOU), and the Vice President for Student Affairs. Each organization and the Vice President submit to the Coordinator a list of students willing to serve on the committee. The Coordinator interviews all nominees and then selects students for the Committee to fill any vacancies from the year before using the following quota: three students as on-campus, three students as off-campus, and (if numbers allow) two students as alternate representatives. The Coordinator then forwards the names to the President for approval. If the Coordinator does not receive nominations by the end of Spring term, he or she may, with the approval of the Vice President for Student Affairs, follow a different procedure for selecting student Committee members.

(6) The Coordinator convenes the Student Conduct Committee early in Fall term of each year for orientation and training. Faculty and student members of the Committee must attend training as a condition of their membership. Faculty and students who do not attend training during the Fall and at other times during the year will be removed from the Student Conduct Committee.

(7) The Student Conduct Committee reviews and recommends to the Vice President for Student Affairs appropriate changes to the Code of Student Responsibility. However, the Vice President for Student Affairs, the Coordinator of Campus Judicial Affairs, or any other campus individual or group may also recommend changes at any time. The Vice President for Student Affairs coordinates proposed changes with appropriate campus groups and places a notice in the student newspaper inviting interested parties to review the revision. Upon completion of the review process the Vice President for Student Affairs will recommend the changes to the President for final approval. The revisions become effective when filed with the Oregon Secretary of State's Office.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 3-1982, f. & ef. 10-20-82; WOSC 3-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 4-1993, f. & cert. ef. 10-21-93; WOSC 2-1996, f. & cert. ef. 11-12-96; Renumbered from 574-030-0051; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0030

Hearing Sub-Committee

(1) The Hearing Sub-Committee is a sub-committee of the Student Conduct Committee. This sub-committee will consist of a maximum of two faculty members and four student members. Selection of sub-committee members for each hearing sub-committee is made by the Coordinator for Campus Judicial Affairs. A minimum of one faculty member and two students is required for a quorum, and a quorum must always consist of at least one more student than faculty member. If a quorum cannot be obtained, a hearing will be postponed until a quorum is present, unless the student waives the requirement for a quorum in writing.

(2) The Hearing Sub-Committee will meet at the request of the Coordinator of Campus Judicial Affairs to hear judicial cases. The Hearing Sub-Committee will select a chair for each hearing and that chair will submit findings and sanctions to the Coordinator of Campus Judicial Affairs. A faculty or staff member must always serve as chair.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 3-1982, f. & ef. 10-20-82; WOSC 3-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 4-1993, f. & cert. ef. 10-21-93; WOSC 2-1996, f. & cert. ef. 11-12-96; Renumbered from 574-030-0052; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0040

Appeals Sub-Committee

An Appeals Sub-Committee is a sub-committee of the Student Conduct Committee formed as needed to hear appeals of decisions made by the Coordinator of Campus Judicial Affairs. An Appeals Sub-Committee consists of a maximum of two faculty members and four student members. For more information concerning appeals, see the appeals section (574-032-0120).

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 2-1996, f. & cert. ef. 11-12-96; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0050

Delegation of Authority

(1) Subject to the approval of the President, the Student Conduct Committee recognizes the University Residences Judicial System and grants the Director of University Residences authority to:

(a) Formulate regulations governing the conduct of residential students in and around campus operated residences;

(b) Formulate procedures and administrative practices to be followed by the Residence Halls Judicial Board;

(c) Assign judicial sanctions exclusive of expulsion, suspension, or negative notation on transcript, appropriate to the enforcement of campus residence regulations.

(2) Students or groups may appeal decisions of the Residence Halls Judicial Board to the Coordinator of Campus Judicial Affairs who will determine if he or she will handle the appeal or refer it to the Student Conduct Committee. The student or group must file the appeal with the Coordinator of Campus Judicial Affairs within five working days in which the University is in session after receiving the sanction notice from the Residence Halls Judicial Board. The Judicial Board Chairperson will submit to the Coordinator a copy of the appealing student's or student group's conduct file for each judicial case heard by the Residence Halls Judicial Board. The file will minimally include the charges, the findings, the sanction(s) assigned, the student's previous academic and disciplinary history, and information concerning the appeal process.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 3-1982, f. & ef. 10-20-82; WOSC 3-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 4-1993, f. & cert. ef. 10-21-93; WOSC 2-1996, f. & cert. ef. 11-12-96; Renumbered from 574-030-0053; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0060

Complaint

(1) The judicial process at Western Oregon University begins with the receipt of one of the following by the Coordinator of Campus Judicial Affairs:

(a) A Campus Safety and Security or Residence Halls incident report; or

(b) Any other type of University incident report or complaint; or

(c) A police report; or

(d) A signed and written complaint by any individual or group, whether members of the University community or not. The complaint may be in the form of an incident report or letter.

(2) Upon receipt of the complaint or report, the Coordinator of Campus Judicial Affairs will evaluate the information presented and determine whether enough information exists to make allegations that the student(s) named in the complaint or report engaged in activities prohibited by the Code of Student Responsibility. The Coordinator will evaluate this information in addition to determine if the alleged violations may result in suspension, expulsion, or negative notation on the transcript.

(3) Within seven working days, not counting days when the University is not in session, from when the Coordinator determines that there is sufficient basis to charge the student named in the complaint or report (now called "the charged student"), the Coordinator will send the charged student a letter that includes the following:

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(a) A notice for the student to meet with the Coordinator of Campus Judicial Affairs for a pre-hearing meeting;

(b) The alleged violations of the Code of Student Responsibility;

(c) The student's basic rights granted by the Code of Student Responsibility, including the right to have the case heard by the University Student Conduct Committee if sanctions of suspension, expulsion, or negative notation on the transcript could result;

(d) Notice that a copy of the Code of Student Responsibility can be found in the Vice President for Student Affairs' Office, on reserve at the Library, or at the Offices of the Associated Students of Western Oregon University; and

(e) Notice that a decision affecting the student may be made even if the student fails to appear for a pre-hearing meeting.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 2-1996, f. & cert. ef. 11-12-96; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0070

Pre-hearing Meeting with the Coordinator of Campus Judicial Affairs

The purpose of a pre-hearing meeting with the Coordinator is to explain the conduct procedures to the charged student and to select the proper hearing body to resolve the allegations. The charged student may at this meeting request that the pre-hearing meeting serve as an actual hearing, thereby waiving his or her right to five days' written notice prior to a hearing, and, in cases where suspension, expulsion, or negative notation may result, waiving his or her right to Student Conduct Committee hearing. If the charged student does not wish the pre-hearing meeting to be treated as the actual hearing, a hearing will be scheduled with the hearing body the charged student has chosen at a time that gives the charged student at least five working days' notice prior to the hearing excluding days the University is not in session. If the student does not appear for a pre-hearing meeting, the Coordinator will set a time and place for a hearing. If the case has been determined by the Coordinator to possibly result in suspension, expulsion, or negative notation on the transcript, the Coordinator will set a University Student Conduct Committee hearing. In all other cases, the Coordinator will set an informal hearing. The time between the student's receipt of the notice and the hearing date must be at least five days. The Coordinator will notify the student that he or she may waive the hearing before the University Student Conduct Committee and elect to have the case heard by the Coordinator if such a hearing has been set.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 2-1996, f. & cert. ef. 11-12-96; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0080

Types of Hearings

All those considering evidence at all levels of the judicial structure at Western Oregon University will base their decisions on a preponderance of the evidence. A preponderance of the evidence means that based on the information that is presented, the charged student has more likely than not, engaged in the charged misconduct.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 2-1996, f. & cert. ef. 11-12-96; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0090

Hearing with the Coordinator of Campus Judicial Affairs

(1) The purpose of a hearing with the Coordinator of Campus Judicial Affairs is to:

(a) Consider information presented by the charged student, information from the complaint or report(s), and other supporting information;

(b) Make findings based on that information;

(c) Uphold or drop each allegation based upon the findings; and

(d) If allegations are upheld, assign sanctions commensurate with the violation(s) and the student's previous disciplinary and academic history. The Coordinator of Campus Judicial Affairs has authority to levy sanctions deemed appropriate under this Code (see 574-032-0010) or can refer the student and case to the Hearing Sub-Committee without action.

(2) For all hearings with the Coordinator of Campus Judicial Affairs, the student has the following rights:

(a) To have access to his or her judicial file to the extent permitted by law after giving the Coordinator sufficient notice to purge the file of information within the file considered to be the educational record of another student(s);

(b) To have knowledge of the charges and the names of those providing information supporting the charges;

(c) To offer evidence challenging the statements of those providing information regarding the charges;

(d) To be notified in writing of the outcome of the hearing within five working days in which the University is in session;

(e) To request a hearing with the Hearing Sub-Committee; and

(f) To appeal to the appropriate University official/body as defined in the appeal process (see 574-032-0120).

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 2-1996, f. & cert. ef. 11-12-96; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0100

Hearing with the Hearing Sub-Committee

The Hearing Sub-Committee will be convened when requested by the Coordinator of Campus Judicial Affairs or the Charged Student. The Coordinator will present information pertinent to the case, which may include past conduct history of the charged student that is relevant to the case. The Coordinator, when appropriate, may present witnesses for both the charged student and the complainant, as requested by the Committee.

(1) For all hearings with the Student Conduct Hearing Sub-Committee, the student has the following rights:

(a) Five working days' notice prior to the hearing, excluding days in which the University is not in session, unless the student waives this right in writing;

(b) To have knowledge of the charges and of those providing information supporting the charge;

(c) To have an advisor attend the hearing with the student. The advisor cannot speak for or represent the student. Failure of the advisor to comply with this stipulation will result in the removal of the advisor from the proceeding by the faculty chairperson of the Hearing Sub-Committee;

(d) To challenge the statements of the complainant(s) or victim(s) and those providing information supporting the charge;

(e) To have advance notification of the hearing process and procedures through the mail or in a meeting with the Coordinator. This meeting with the Coordinator is to be scheduled prior to the hearing. It is the student's responsibility to schedule this meeting;

(f) To not appear for a hearing, and not have that absence used against him or her;

(g) To remain silent during a hearing, and not have that silence used against him or her;

(h) To be notified in writing of the outcome of the hearing within five working days in which the University is in session; or

(i) To appeal to a University official, or hearing body.

(2) The student may present information on his or her own behalf and challenge the statements of complainants, witnesses, and statements read during the hearing. The student may be accompanied to the hearing by a person of the student's choosing (advisor) who may neither represent the student nor present the student's case. An advisor who fails to comply with the advisor role restrictions or who disrupts the hearing may be removed from the advisor role and excluded from the hearing.

(3) The members of the Hearing Sub-Committee may question the charged student, witnesses, and complainants to determine facts relevant to the case. The Hearing Sub-Committee, during deliberations, will resolve all issues of fact based on the evidence presented at the hearing. Based upon these findings the Hearing Sub-Committee renders a decision concerning whether to uphold or drop each separate allegation. While the Hearing Sub-Committee resolves the allegations only the Hearing Sub-Committee members are present.

(4) The findings will be announced to the charged student following deliberations and, at that time, the Coordinator will present information concerning the charged student's academic record and any previous judicial record. The charged student may also present information relevant to his/her/their previous record, as well as circumstances which may have a bearing on possible sanctions.

(5) For the determination of sanctions, only the Hearing Sub-Committee members are present. Following that determination, the Chair of the Committee will announce, with the charged student present, the sanctions the Hearing Sub-Committee assigned.

(6) The Coordinator of Campus Judicial Affairs will confirm in writing to the charged student the results of the hearing within five working days in which the University is in session.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

ADMINISTRATIVE RULES

Hist.: WOSC 3-1982, f. & ef. 10-20-82; WOSC 3-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 4-1993, f. & cert. ef. 10-21-93; WOSC 2-1996, f. & cert. ef. 11-12-96; Renumbered from 574-030-0056; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0110

Procedures when Charged Student Fails to Appear at Hearing

When the charged student fails to appear at the time specified for a hearing, provided no prior arrangements for delay have been confirmed, the hearing will be held with the charged student not present. The results of the hearing will indicate that the hearing was held with the charged student in absentia. The charged student's absence cannot be assumed to be an admission of responsibility; nor can it be used in any way in the hearing body's or officer's determination of facts or judgment.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 3-1982, f. & ef. 10-20-82; WOSC 3-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 2-1996, f. & cert. ef. 11-12-96; Renumbered from 574-030-0057; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0120

Appeal of Hearing

(1) A student in violation may appeal decisions reached at a hearing. The appeal must be filed within five working days in which the University is in session following the date the student receives notice of the hearing results. Appeals must be delivered, in writing, to the Office of the Vice President for Student Affairs or the Office of University Residences. An appeal form must include specific justification for the appeal as listed in (3) below.

(2) The Coordinator for Campus Judicial Affairs may appeal decisions reached at a hearing to the Vice President for Student Affairs if the Coordinator believes the decision is not in compliance with University Standards.

(3) Except as required to explain the basis of new evidence, an appeal will be limited to review of the accurate record of the initial hearing and supporting documents for one or more of the following purposes:

(a) To determine whether the original hearing was conducted in conformity with the procedures described in the Code of Student Responsibility;

(b) To determine whether the decision reached regarding the charged student was based on a preponderance of the evidence; that is, whether the facts presented were sufficient to establish that a violation of the Code of Student Responsibility occurred;

(c) To determine whether the sanction(s) imposed were appropriate to the charged student's previous judicial history and to the present violation(s) of the Code of Student Responsibility; or

(d) To consider new evidence, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such evidence and/or facts were not known to the person appealing at the time of the original hearing.

(4) The following decisions may be made by the Appeals Body:

(a) That evidence exists not available at the time of the hearing sufficient to alter the original decision. In this case the Appeals Body remands the case to the original hearing body for a supplemental hearing;

(b) The appeal is denied. In this case, the entire decision of the original hearing body, including sanctions, remains effective. New violations can never be found through the appeal process; or

(c) The appeal is upheld. In this case, the Appeals Body renders a new decision, including reducing or removing sanctions, and/or replacing the findings and sanctions of the original hearing body or officer.

(5) Procedure

(a) The Vice President for Student Affairs will hear appeals of hearings with the Student Conduct Hearing Sub-Committee and appeals of hearings with the Coordinator of Campus Judicial Affairs;

(b) An appeals sub-committee of the Student Conduct Committee or the Vice President for Student Affairs will hear appeals of hearings with the Coordinator of Campus Judicial Affairs;

(c) The Provost will hear appeals of cases of academic dishonesty;

(d) The Coordinator of Campus Judicial Affairs will hear appeals of hearings with the Residence Halls Judicial Board;

(e) Upon receipt of the appeal, the Appeals Body may suspend any or all sanctions pending its decision;

(f) The Appeals Body must consider the appeal based on the record, with no new evidence considered. If new evidence becomes available, the Appeals Body must remand the case to a new hearing with the original hearing body. The Coordinator of Campus Judicial Affairs must provide a complete and accurate record of the original hearing to the Appeals Body.

The Appeals Body may, but is not required to, meet with the student regarding his or her appeal; and

(g) Within ten days in which the University is in session following receipt of the appeal, the Appeals Body will notify the student in writing of the results of the appeal.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 3-1982, f. & ef. 10-20-82; WOSC 3-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 4-1993, f. & cert. ef. 10-21-93; WOSC 2-1996, f. & cert. ef. 11-12-96; Renumbered from 574-030-0058; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0130

Hearing with Mediators

The Judicial Program at Western places confidence in the process of mediation as a preventative and educational method of intervention for student misconduct. When the Judicial Program makes use of mediation it does so with the primary goal of diverting students from the adjudicative and, in some cases, adversarial judicial hearing process. The anticipated outcome of this action is for participants in mediation to voluntarily create a resolution to their conflict that is confidential and non-binding. The Judicial program is primarily an adjudicative process which often must address allegations that a charged student's behavior harmed another person. In some of these cases, mediation may be used as a diversion or as a sanction in the form of victim/offender reconciliation. The nature of a case involving a victim and an offender necessitates a modification of the way mediation traditionally is structured. In victim/offender mediations, participation by the charged student may not be voluntary, the mediated agreement may not be confidential, and the mediated agreement may become binding for the charged student.

(1) Uses:

(a) Use of Mediation in the Absence of Charges. Disputants not charged with a violation of the Code of Student Responsibility may use mediation at any time by making a request for mediation services at the Office of the Vice President for Student Affairs or the Office of University Residences. This includes victim/offender mediation in which the victim declines to file a complaint and the Coordinator of Campus Judicial Affairs does not pursue the allegations;

(b) Use of Mediation after a Complaint is Made. When a victim files a complaint with the Campus Judicial Program alleging that the behavior of a charged student harmed him or her, or when judicial action is initiated by a report of harmful treatment to the person, mediation may be used in place of the adjudicative process, provided both victim and charged student agree to such mediation. All charges are suspended pending the victim's and the charged student's satisfaction with the outcome of the mediation. The victim has the right to return the complaint to the Coordinator for a formal judicial review if he or she is not satisfied with the outcome of mediation;

(c) Student Found In Violation and Victim Chooses Mediation. When a charged student has been found in violation of any section of the Code where that charged student's behavior victimized or harmed another member(s) of the University community, victim-offender mediation may be assigned as a sanction.

(2) Mediation Procedures A student(s) charged with a violation of the Code may request to use mediation at any time during the judicial process. A victim may request mediation without filing a complaint. Mediations of this type are non-binding except in cases noted below, and confidential to the extent permitted by law.

(a) Victim/Charged Student, Voluntary Mediation:

(A) Mediation between a victim and a charged student may occur at the request of either party and with the consent of and voluntary participation of both parties;

(B) Before or during a student conduct hearing, the Coordinator of Campus Judicial Affairs may offer mediation to a charged student in place of that hearing;

(C) When all parties agree to mediation, mediation will be used in place of the adjudicative process;

(D) Agreements reached when mediation is used in place of adjudication will be binding with the permission of the victim. Permission for a binding agreement will be given to the Coordinator of Campus Judicial Affairs by the victim prior to the mediation. In such a case, the binding agreement becomes a de facto sanction and will become part of the charged student's judicial file. The charged student must adhere to the agreement or face possible future judicial action;

(E) The victim may, at any time, withdraw permission for a binding agreement and/or withdraw his or her complaint. In this case, the mediation becomes confidential and non-binding;

ADMINISTRATIVE RULES

(F) The victim may, at any time, withdraw his or her complaint and withdraw from the mediation process;

(G) The charged student may, at any time, withdraw from the mediation process. Such action by the charged student, however, may return the original charges to the adjudicative process;

(H) If the victim reports dissatisfaction with the outcome of the mediation he or she may return his or her complaint to the adjudicative process for a student conduct hearing; and

(I) The Coordinator of Campus Judicial Affairs will, in most cases, honor the victim's request to withdraw his or her complaint from the adjudicative process. The Coordinator may, however, adjudicate charges whenever he or she determines that it is in the best interest of the University community to do so.

(b) Mandated participation in mediation when charges of theft, vandalism, harassment, assault, or other harmful treatment are upheld through the adjudicative process, participation in a victim/offender mediation may be assigned to the charged student as a sanction. When mediation is used as a sanction, the following will apply:

(A) The victim must agree to such a sanction in advance;

(B) The charged student must verify that he or she attempted mediation in order to fulfill the sanction of mediation; and

(C) Unless otherwise requested by the victim, agreements reached during sanctioned mediations will be submitted to the Coordinator of Campus Judicial Affairs. This agreement will serve as a part of the sanction which the charged student must complete. Failure to abide by the agreement may result in the charged student facing further judicial charges for failure to complete a sanction.

(c) Automatic Diversion from the Adjudicative Procedures

(A) When two or more students have been charged with violating the Code of Student Responsibility for the same event, the Coordinator of Campus Judicial Affairs may offer, or the students may request, to use mediation as a diversion from the adjudicative process. The Coordinator of Campus Judicial Affairs may assign interim sanctions pending the mediation. The following conditions must apply:

(i) Two or more students have been involved in the same incident,

(ii) The students have each been charged with violations of the Code based on the same incident,

(iii) The students are each victims of the other's behavior (e.g., by assault, vandalism, theft, etc.),

(iv) The students willingly agree to fully participate in mediation,

(v) The students agree to share the results of the mediation with the Coordinator of Campus Judicial Affairs, and

(vi) The mediated agreement becomes binding and must be adhered to by both parties as a sanction unless otherwise indicated by the Coordinator of Campus Judicial Affairs.

(B) The Coordinator of Campus Judicial Affairs may return the case to the adjudicative process for the following reasons:

(i) One or more of the students does not participate in the mediation,

(ii) Substantial evidence exists that one or more of the students poses a clear and present threat to him or herself or others; or

(iii) One or more of the students fails to adhere to the agreement.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 2-1996, f. & cert. ef. 11-12-96; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0150

Rights of Victims

A fundamental aspect of the Code of Student Responsibility is to provide procedures that ensure the Constitutional rights of the charged student. However, the University also recognizes that the victims of misconduct should also have rights. Therefore, the following rights of victims must be guaranteed during judicial proceedings conducted by the University.

(1) A victim has the right to remain present during the entire judicial proceeding except when a hearing sub-committee is deliberating, announcing its decision, or imposing sanctions.

(2) A victim has the right to have a person of her or his own choice accompany her or him while in attendance at the judicial hearing.

(3) Unless it bears directly on the charges, a victim has the right not to have her or his past history or behavior discussed during a hearing. This includes reference to past violations of the Code of Student Responsibility, past sexual history, and past indiscretions of any type.

(4) A victim may be identified as a witness and has the right to ask questions of other witnesses during a hearing.

(5) A victim has the right to make a victim impact statement during a hearing, to be used or considered for sanctioning purposes.

(6) A victim has the right to be shielded from face to face contact with the charged student.

(7) A victim has the right to be kept informed during the judicial process within legal guidelines; and

(8) A victim has the right to be informed immediately of the outcome of a hearing within legal guidelines.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 3-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 4-1993, f. & cert. ef. 10-21-93; WOSC 2-1996, f. & cert. ef. 11-12-96; Renumbered from 574-030-0060; WOU 3-2001, f. 8-28-01, cert. ef. 8-31-01; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 2-2005, f. & cert. ef. 8-4-05

574-032-0160

Revising and Interpreting the Code of Student Responsibility

(1) Refer all questions concerning the Code of Student Responsibility to the Coordinator of Campus Judicial Affairs. The Coordinator of Campus Judicial Affairs is the final interpreter of the Code of Student Responsibility.

(2) The Code of Student Responsibility will be reviewed no less than once every five years under the direction of the Coordinator of Campus Judicial Affairs.

(3) A formal, written request to review the Code of Student Responsibility may be submitted to the Coordinator of Campus Judicial Affairs.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: WOSC 2-1996, f. & cert. ef. 11-12-96; WOU 2-2005, f. & cert. ef. 8-4-05

574-050-0005

Special Fees for Selected Courses and Some General Services

The Schedule of Fees for Selected Courses and General Services for Western Oregon University are hereby adopted by reference.

[Publications: Publication(s) referenced are available from the Office of the Vice President for Finance and Administration at Western Oregon University.]

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: OCE 1, f. & ef. 7-12-76; OCE 1-1978, f. & ef. 10-27-78; OCE 2-1980, f. & ef. 11-5-80; OCE 1-1981, f. & ef. 1-7-81; OCE 3-1981, f. & ef. 8-7-81; OCE 4-1981, f. & ef. 11-2-81; WOSC 2-1982, f. & ef. 9-17-82; WOSC 1-1983, f. & ef. 10-11-83; WOSC 1-1985, f. & ef. 10-4-85; WOSC 1-1986, f. & ef. 10-15-86; WOSC 1-1987, f. 4-1-87, ef. 9-23-87; WOSC 2-1988, f. & cert. ef. 9-19-88; WOSC 1-1989, f. & cert. ef. 4-18-89; WOSC 2-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 5-1989, f. & cert. ef. 9-7-89; WOSC 1-1990, f. & cert. ef. 4-18-90; WOSC 2-1990, f. & cert. ef. 9-24-90; WOSC 1-1991, f. & cert. ef. 1-30-91; WOSC 2-1991, f. & cert. ef. 3-22-91; WOSC 4-1991, f. & cert. ef. 5-21-91; WOSC 7-1991, f. & cert. ef. 7-22-91; WOSC 2-1992, f. & cert. ef. 6-16-92; WOSC 3-1992, f. & cert. ef. 8-14-92; WOSC 1-1993, f. & cert. ef. 1-15-93; WOSC 2-1993, f. & cert. ef. 6-18-93; WOSC 3-1993, f. & cert. ef. 7-16-93; WOSC 5-1993, f. & cert. ef. 10-21-93; WOSC 1-1994, f. & cert. ef. 8-12-94; WOSC 1-1995, f. & cert. ef. 8-11-95; WOSC 1-1996, f. & cert. ef. 10-16-96; WOSC 1-1997, f. & cert. ef. 2-27-97; WOU 3-1997, f. & cert. ef. 10-7-97; WOU 1-1998, f. & cert. ef. 1-26-98; WOU 2-1998, f. & cert. ef. 7-24-98; WOU 1-1999, f. & cert. ef. 2-25-99; WOU 2-1999, f. & cert. ef. 7-27-99; WOU 1-2000, f. & cert. ef. 3-16-00; WOU 2-2000, f. & cert. ef. 6-28-00; WOU 1-2001, f. & cert. ef. 3-5-01; WOU 2-2001, f. & cert. ef. 7-30-01; WOU 1-2002, f. 3-12-02, cert. ef. 3-15-02; WOU 2-2002, f. 8-2-02, cert. ef. 8-15-02; WOU 3-2002, f. 10-7-02, cert. ef. 10-15-02; WOU 1-2003, f. & cert. ef. 4-2-03; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 1-2004, f. & cert. ef. 3-24-04; WOU 2-2004, f. & cert. ef. 8-4-04; WOU 1-2005, f. & cert. ef. 3-8-05; WOU 2-2005, f. & cert. ef. 8-4-05

Adm. Order No.: WOU 3-2005

Filed with Sec. of State: 8-12-2005

Certified to be Effective: 8-12-05

Notice Publication Date: 7-1-05

Rules Amended: 574-050-0005

Subject: Amendments will allow for increases, additions, and revisions of special course fees and general services fees (this filing amends previous rule updating fees schedule which is adopted herein by reference).

Rules Coordinator: Debra L. Charlton—(503) 838-8175

574-050-0005

Special Fees for Selected Courses and Some General Services

The Schedule of Fees for Selected Courses and General Services for Western Oregon University are hereby adopted by reference.

[Publications: Publication(s) referenced are available from the Office of the Vice President for Finance and Administration at Western Oregon University.]

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: OCE 1, f. & ef. 7-12-76; OCE 1-1978, f. & ef. 10-27-78; OCE 2-1980, f. & ef. 11-5-80; OCE 1-1981, f. & ef. 1-7-81; OCE 3-1981, f. & ef. 8-7-81; OCE 4-1981, f. & ef. 11-2-81; WOSC 2-1982, f. & ef. 9-17-82; WOSC 1-1983, f. & ef. 10-11-83; WOSC 1-1985, f. & ef. 10-4-85; WOSC 1-1986, f. & ef. 10-15-86; WOSC 1-1987, f. 4-1-87, ef. 9-23-87; WOSC 2-1988, f. & cert. ef. 9-19-88; WOSC 1-1989, f. & cert. ef. 4-18-89; WOSC 2-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 5-1989, f. & cert. ef. 9-7-89; WOSC 1-1990, f. & cert. ef. 4-18-90; WOSC 2-1990, f. & cert. ef. 9-24-90; WOSC 1-1991, f. & cert. ef. 1-30-91; WOSC 2-

ADMINISTRATIVE RULES

1991, f. & cert. ef. 3-22-91; WOSC 4-1991, f. & cert. ef. 5-21-91; WOSC 7-1991, f. & cert. ef. 7-22-91; WOSC 2-1992, f. & cert. ef. 6-16-92; WOSC 3-1992, f. & cert. ef. 8-14-92; WOSC 1-1993, f. & cert. ef. 1-15-93; WOSC 2-1993, f. & cert. ef. 6-18-93; WOSC 3-1993, f. & cert. ef. 7-16-93; WOSC 5-1993, f. & cert. ef. 10-21-93; WOSC 1-1994, f. & cert. ef. 8-12-94; WOSC 1-1995, f. & cert. ef. 8-11-95; WOSC 1-1996, f. & cert. ef. 10-16-96; WOSC 1-1997, f. & cert. ef. 2-27-97; WOU 3-1997, f. & cert. ef. 10-7-97; WOU 1-1998, f. & cert. ef. 1-26-98; WOU 2-1998, f. & cert. ef. 7-24-98; WOU 1-1999, f. & cert. ef. 2-25-99; WOU 2-1999, f. & cert. ef. 7-27-99; WOU 1-2000, f. & cert. ef. 3-16-00; WOU 2-2000, f. & cert. ef. 6-28-00; WOU 1-2001, f. & cert. ef. 3-5-01; WOU 2-2001, f. & cert. ef. 7-30-01; WOU 1-2002, f. 3-12-02, cert. ef. 3-15-02; WOU 2-2002, f. 8-2-02, cert. ef. 8-15-02; WOU 3-2002, f. 10-7-02, cert. ef. 10-15-02; WOU 1-2003, f. & cert. ef. 4-2-03; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 1-2004, f. & cert. ef. 3-24-04; WOU 2-2004, f. & cert. ef. 8-4-04; WOU 1-2005, f. & cert. ef. 3-8-05; WOU 2-2005, f. & cert. ef. 8-4-05; WOU 3-2005, f. & cert. ef. 8-12-05

Oregon Youth Authority
Chapter 416

Adm. Order No.: OYA 17-2005
Filed with Sec. of State: 7-29-2005
Certified to be Effective: 7-29-05
Notice Publication Date: 6-1-05
Rules Adopted: 416-440-0005, 416-440-0015, 416-440-0035
Rules Amended: 416-440-0020
Subject: OAR 416-440-0005 will be added to clarify Purpose, OAR 416-440-0015 will be added for Definitions, and OAR 416-440-0035 will be added to highlight prohibited mail. OAR 416-440-0020 will be revised for clarity.
Rules Coordinator: Kimberly Walker—(503) 378-3864

416-440-0005
Purpose

(1) The purpose of these rules is to establish and define offender mail privileges in a manner that is consistent with the Oregon Youth Authority's (OYA) discharge of its statutory responsibilities and its multi-faceted mission to maintain public safety, to hold offenders accountable, and to provide treatment and reformation services.

(2) It is the policy of the OYA that its rules and policies governing the management and operation of its facilities apply to all offenders confined in those facilities, including but not limited to offenders who have been convicted and sentenced as adults and transferred to OYA physical custody.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.025, 419C.478, 420A.015, 420.011, 420.014, 420A.025 & 420A.105
Hist.: OYA 17-2005, f. & cert. ef. 7-29-05

416-440-0015
Definitions

(1) Offender correspondence: Correspondence and packages designated business or personal.

(a) Business correspondence is mail sent to and received from a business correspondent such as an attorney, court or court official, state and federal agencies such as Social Security Administration and Oregon Division of Child Support; legal aid bureau or any other agency or person that provides legal services to the offender, the Oregon governor or member of the Oregon legislature, or OYA administration and management. No limits will be placed on the amount of business mail sent or received. Business mail will remain sealed.

(b) Personal correspondence is all other mail.

(2) Prohibited mail: Any material that threatens or is detrimental to security, safety, or order within a facility or program, including but not limited to:

(a) Clear and convincing evidence that causes OYA staff to believe that a specific piece of mail contains escape plans, plans to commit a criminal act or to violate facility rules, or the mail constitutes a crime in or of itself or is used in the furtherance of illegal activity;

(b) Sexually explicit material which by its nature or content poses a threat or is detrimental to the security, safety, or order of the facility or program, or facilitates criminal activity;

(c) Mail sent or received on behalf of another offender;

(d) Contraband items, including but not limited to weapons or explosives, medications, electronic items, or photographs with chemical substances on the back of the photograph;

(e) Unauthorized business transactions, such as promotions given in exchange for purchase or subscription, record or book clubs, requests or applications for credit cards, credit or deferred billing transactions;

(f) Publications not on the facility's approved reading list and/or sent other than from the official publisher; and

(g) Attachments or enclosures that are glued, taped or otherwise affixed to the envelope or package or its contents.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.025, 419C.478, 420A.015, 420.011, 420.014, 420A.025 & 420A.105
Hist.: OYA 17-2005, f. & cert. ef. 7-29-05

416-440-0020
Offender Mail

(1) The OYA realizes it is important for offenders in its custody to maintain ties with the community through written correspondence with community members, family, and friends. Within the administration of its facilities and programs, the OYA seeks to balance the positive effects of community contact with the responsibilities and values of the agency's mission.

(2) An offender's right to send and receive mail will be protected unless a legitimate concern exists that the correspondence threatens the preservation of order, security, or discipline of a facility/program; poses a threat to the safety of the program, public officials, or the general public; is being used to further illegal activities or; at the court's direction. When such concerns exist, OYA staff may inspect, read, or reject offender mail, according to the provisions of Oregon statute and administrative rules, and OYA policies and procedures.

(3) Offender correspondence is designated business or personal.

(4) The OYA will provide the equivalent of three stamps per week for offenders who have no financial resources to maintain ties to the community, including letters to family, friends, or other persons who are involved in the offender's life. Otherwise, no limits will be placed on the amount of business or personal correspondence an offender sends or receives.

(5) Personal mail may be inspected for contraband; business mail will remain sealed. If contraband items are found, they will be removed and documented. Appropriate contents will be delivered to the offender.

(6) All mail will:

(a) Be placed in an envelope or appropriate packaging acceptable by the official mail carrier.

(b) Include a sending and return address on the envelope or package.

(c) Contain appropriate postage.

(d) Be sent via the U.S. Postal Service or official carriers.

(A) Business correspondence may be sent using U.S. postage and official carrier, or without postage using the facility's internal delivery system or state shuttle mail system, depending upon the intended recipient.

(B) Personal correspondence must be sent via the U.S. Postal Service. It is not appropriate to use the state shuttle mail system to send personal correspondence.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 419C.478, 420A.015, 420.011, 420.014, 420A.025 & 420A.105
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 11-2002, f. & cert. ef. 5-17-02; OYA 17-2005, f. & cert. ef. 7-29-05

416-440-0035
Prohibited Mail

(1) If mail is perceived to be prohibited, it may be read or rejected by OYA staff.

(a) For offenders placed in OYA facilities, only the Superintendent/Camp Director, or specific designee, may read or reject an offender's mail.

(b) For offenders placed under supervision in the community, only the local Supervisor, or specific designee, may read or reject an offender's mail.

(2) If mail is rejected, both the sender and intended recipient will be notified.

(3) When an offender transfers and an address is available, all letters and packages will be promptly forwarded, unopened to the offender. If no address is available, the mail will be marked "Not at this address" and returned, unopened, to the post office.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 419C.478, 420A.015, 420.011, 420.014, 420A.025 & 420A.105
Hist.: OYA 17-2005, f. & cert. ef. 7-29-05

Adm. Order No.: OYA 18-2005
Filed with Sec. of State: 8-12-2005
Certified to be Effective: 8-12-05
Notice Publication Date: 7-1-05

Rules Repealed: 416-380-0000, 416-380-0010, 416-380-0020, 416-380-0030, 416-380-0040, 416-380-0050, 416-380-0060, 416-380-0070

Subject: These rules are being repealed in that relevant language is contained in other legal documents. The notice to repeal these rules

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was originally filed May 9, 2003 and the Certificate showing adoption of the repeal was held pending repeal of other rules.

Rules Coordinator: Kimberly Walker—(503) 378-6834

**Real Estate Agency
Chapter 863**

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

Filed with Sec. of State: 7-18-2005

Certified to be Effective: 7-22-05 thru 12-26-05

Notice Publication Date:

Rules Suspended: 863-010-0640(T), 863-015-0060(T)

Subject: Proposed temporary administrative rule changes to OAR 863-015-0060 and OAR 863-010-0640 are suspended for the following reasons: the proposed change to OAR 863-015-0060 is not required since the Commissioner's authority to issue a limited license is specifically prescribed in statute, ORS 696.130; and the proposed change to OAR 863-010-0640 - setting fees for Real Estate Marketing Organization licenses - is being suspended because of issues regarding the recovering of costs of processing the applicant's fingerprint information. The versions of the administrative rules in effect prior to promulgation of the temporary rules remain in force.

Rules Coordinator: Brian DeMarco—(503) 378-4170, ext. 237

863-010-0640

Fees

The following fees shall apply to filings made pursuant to Chapter 217, Oregon Laws 1995:

(1) Issuance or renewal of a real estate marketing organization license: \$500.00;

(2) Filing of change of information required by OAR 863-010-0610(5): \$75.00;

(3) Upon loss or destruction of license, issuance of a duplicate license: \$5.00; and

(4) A fee sufficient to recover the costs of processing the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant.

Stat. Auth.: ORS 696.793

Stats. Implemented: ORS 696.606

Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05 (Suspended by REA 3-2005(Temp), f. 7-18-05, cert. ef. 7-22-05 thru 12-26-05)

863-015-0060

Licensing; Limited Licenses

(1) At the Commissioner's sole discretion, the Commissioner may issue a limited license.

(2) The limited license issued may be limited:

(a) By term;

(b) To serve as the agent of a particular principal real estate broker, if a real estate broker; or

(c) By conditions to be observed in the exercise of the privileges granted.

(3) A limited license issued under sections (1) and (2) does not confer any property right in the privileges to be exercised thereunder, and the holder of a limited license may not have the right to renewal of such license. A limited license may be suspended or revoked, or the Commissioner on the grounds set out in ORS 696.301 may reprimand the licensee.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05 (Suspended by REA 3-2005(Temp), f. 7-18-05, cert. ef. 7-22-05 thru 12-26-05)

**Secretary of State,
Elections Division
Chapter 165**

Adm. Order No.: ELECT 5-2005

Filed with Sec. of State: 8-1-2005

Certified to be Effective: 8-1-05

Notice Publication Date: 7-1-05

Rules Amended: 165-012-0230

Subject: This rule amendment exempts state candidates and committees that are only filing annual supplemental reports for elections

occurring before 2004 from the requirement to file those supplemental reports electronically.

Rules Coordinator: Fred Neal—(503) 986-1518

165-012-0230

Electronic Filing Rule

The purpose of this rule is to adopt standards and procedures for contribution and expenditure reports filed electronically under ORS 260.159.

(1) For each election, the following reports shall be filed electronically by state committees and candidates required to file electronically:

(a) First Preelection report;

(b) Second Preelection report;

(c) Post-Election report;

(d) September supplemental report; and

(e) Reports required under ORS 260.118.

(2) The supplement to the second preelection, supplement to the post-election, and contributions received during legislative session reports may not be filed electronically. These reports must be filed in a paper format.

(3) Once a committee begins filing reports electronically, all subsequent reports must be filed electronically (other than the reports that this rule requires to be filed in a paper format) unless the committee demonstrates to the Secretary that extraordinary and unforeseeable calamitous circumstances have made it impracticable to continue to file electronically.

(4) State candidates and committees must file electronically if, during the election or reporting period, as described in ORS 260.159(1), the committee or candidate has an aggregate amount of contributions received and expenditures made of more than \$50,000. This means that when the committee has a total of contributions and expenditures exceeding \$50,000 (such as \$25,100 in contributions and \$25,000 in expenditures), it must begin filing electronically, starting with the report covering the next accounting period after the accounting period in which the threshold is exceeded. This requirement does not apply to state candidates and committees that are *only* filing annual September supplemental reports for elections that took place before 2004, if the candidate or committee is not otherwise required to file electronically under this rule.

(5) Candidates and committees filing electronically must have their own software that they use to enter data. The software must be capable of generating final data for detailed contribution and expenditure reports, including forms PC 1, PC 2, PC 3, PC 4A, PC 4B, PC 5, PC 6, and PC 9. The information provided on the forms must fully comply with ORS Chapter 260 and the current Campaign Finance Manual. To file reports electronically, the committee or candidate must export the data of the final contribution and expenditure report generated in its software into an ASCII tab-delimited file that is formatted with the following file format specifications. Reports not corresponding to the required file format will not be considered filed.

(a) All reports must correspond to the required file format. (Attachment 1 to this rule);

(b) The character set must be ASCII.

(c) Files must have been created by or be readable by an operating system that is compatible with Microsoft Windows 95 or higher.

(d) Records must end with a carriage return ASCII character (CR) followed by a line feed ASCII character (LF).

(6) Amendments to electronically filed reports must consist of a complete version of the original filing, as amended. It is not sufficient to submit just the portions of the original filing that have been changed. A committee must make any necessary changes in its database and transmit the entire report using the same file format. The PC 1 form of the file must indicate that the filing is an "Amendment" in the "Filing Type" field. When a file is loaded into the Election Division's database, the division will compare this filing with the committee's previous filing of the same report and print amendment forms noting any changes.

(7) Reports must be submitted in one of the following formats, and must be received by 5:00 p.m. on the filing deadline to be considered filed timely:

(a) 3-1/2-inch high-density MS DOS-formatted diskette; or

(b) PC-readable CD; or

(c) Attached to an e-mail to elecfile.sos@state.or.us.

(8) Each report filed electronically must be named as follows:

(a) The committee's six-digit identification number;

(b) The date of the election in MMDDYY format;

(c) The report type (1st, 2nd, Post, Supp. or I&R);

(d) The filing type (Orig. or Amend.); and

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(e) The current date in MMDDYY format. An example of a file name is XXXXX MMDDYY 1st Orig MMDDYY. If the committee transmits its report via email, the subject line of the email must consist of the file name.

(9) Electronic reports must not contain viruses. The Election Division's computer system will screen and reject all reports filed electronically that are detected to contain viruses. Any report rejected for this reason is considered not filed.

(10) Each committee or candidate filing electronically must also submit a paper copy or PDF of the Summary Statement of Contributions and Expenditures (form PC 1) containing the candidate's or treasurer's signature. The paper copy may be submitted by mail, fax or hand delivery, and must be received by the filing deadline. The PDF must be attached to the email of the report or included on the diskette or CD.

(11) Unless the committee or candidate required to file electronically is excused by the Secretary of State under subsection (3), a report is not considered filed until it is successfully filed electronically. Attachment 1 contains the required file format specifications for electronic filing. [Attachment not included. See ED. NOTE.]

[ED. NOTE: The Attachment referenced is available from the agency.]

Stat. Auth.: ORS 246.150, 260.156, 260.159 & 260.200

Stats. Implemented: ORS 246.021, 260.159 & 260.200

Hist.: ELECT 5-2000, f. & cert. ef. 3-6-00; ELECT 19-2003, f. & cert. ef. 12-5-03; ELECT 24-2003(Temp), f. & cert. ef. 12-15-03 thru 6-12-04; ELECT 6-2004, f. & cert. ef. 6-11-04; ELECT 5-2005, f. & cert. ef. 8-1-05

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123-070-1300	2-25-05	Amend	4-1-05	125-030-0000	3-1-05	Repeal	3-1-05
123-070-1500	2-25-05	Amend	4-1-05	125-030-0001	3-1-05	Repeal	3-1-05
123-070-1600	2-25-05	Amend	4-1-05	125-030-0002	3-1-05	Repeal	3-1-05
123-070-1700	2-25-05	Amend	4-1-05	125-030-0003	3-1-05	Repeal	3-1-05
123-070-1800	2-25-05	Amend	4-1-05	125-030-0004	3-1-05	Repeal	3-1-05
123-070-1900	2-25-05	Amend	4-1-05	125-030-0005	3-1-05	Repeal	3-1-05
123-070-2000	2-25-05	Amend	4-1-05	125-030-0007	3-1-05	Repeal	3-1-05
123-070-2100	2-25-05	Amend	4-1-05	125-030-0009	3-1-05	Repeal	3-1-05
123-070-2200	2-25-05	Amend	4-1-05	125-030-0014	3-1-05	Repeal	3-1-05
123-070-2300	2-25-05	Amend	4-1-05	125-030-0028	3-1-05	Repeal	3-1-05
123-070-2400	2-25-05	Amend	4-1-05	125-030-0029	3-1-05	Repeal	3-1-05
125-020-0100	3-1-05	Repeal	3-1-05	125-030-0030	3-1-05	Repeal	3-1-05
125-020-0110	3-1-05	Repeal	3-1-05	125-030-0033	3-1-05	Repeal	3-1-05
125-020-0120	3-1-05	Repeal	3-1-05	125-030-0060	3-1-05	Repeal	3-1-05
125-020-0130	3-1-05	Repeal	3-1-05	125-030-0070	3-1-05	Repeal	3-1-05
125-020-0140	3-1-05	Repeal	3-1-05	125-030-0080	3-1-05	Repeal	3-1-05
125-020-0200	3-1-05	Repeal	3-1-05	125-030-0081	3-1-05	Repeal	3-1-05
125-020-0210	3-1-05	Repeal	3-1-05	125-030-0082	3-1-05	Repeal	3-1-05
125-020-0220	3-1-05	Repeal	3-1-05	125-030-0100	3-1-05	Repeal	3-1-05
125-020-0225	3-1-05	Repeal	3-1-05	125-031-0000	3-1-05	Repeal	3-1-05
125-020-0300	3-1-05	Repeal	3-1-05	125-031-0005	3-1-05	Repeal	3-1-05
125-020-0310	3-1-05	Repeal	3-1-05	125-031-0006	3-1-05	Repeal	3-1-05
125-020-0320	3-1-05	Repeal	3-1-05	125-031-0010	3-1-05	Repeal	3-1-05
125-020-0330	3-1-05	Repeal	3-1-05	125-050-0000	3-1-05	Repeal	3-1-05
125-020-0335	3-1-05	Repeal	3-1-05	125-050-0020	3-1-05	Repeal	3-1-05
125-020-0340	3-1-05	Repeal	3-1-05	125-050-0040	3-1-05	Repeal	3-1-05
125-020-0350	3-1-05	Repeal	3-1-05	125-050-0060	3-1-05	Repeal	3-1-05
125-020-0360	3-1-05	Repeal	3-1-05	125-055-0005	12-28-04	Amend(T)	2-1-05
125-020-0400	3-1-05	Repeal	3-1-05	125-055-0005	6-21-05	Amend	8-1-05
125-020-0410	3-1-05	Repeal	3-1-05	125-055-0005(T)	6-21-05	Repeal	8-1-05
125-020-0430	3-1-05	Repeal	3-1-05	125-055-0010	12-28-04	Amend(T)	2-1-05
125-020-0440	3-1-05	Repeal	3-1-05	125-055-0010	6-21-05	Amend	8-1-05
125-020-0500	3-1-05	Repeal	3-1-05	125-055-0010(T)	6-21-05	Repeal	8-1-05
125-020-0510	3-1-05	Repeal	3-1-05	125-055-0015	12-28-04	Amend(T)	2-1-05
125-020-0520	3-1-05	Repeal	3-1-05	125-055-0015	6-21-05	Amend	8-1-05
125-020-0530	3-1-05	Repeal	3-1-05	125-055-0015(T)	6-21-05	Repeal	8-1-05
125-020-0540	3-1-05	Repeal	3-1-05	125-055-0020	12-28-04	Amend(T)	2-1-05
125-020-0550	3-1-05	Repeal	3-1-05	125-055-0020	6-21-05	Amend	8-1-05
125-020-0600	3-1-05	Repeal	3-1-05	125-055-0020(T)	6-21-05	Repeal	8-1-05
125-020-0610	3-1-05	Repeal	3-1-05	125-055-0025	12-28-04	Amend(T)	2-1-05
125-020-0620	3-1-05	Repeal	3-1-05	125-055-0025	6-21-05	Amend	8-1-05
125-020-0700	3-1-05	Repeal	3-1-05	125-055-0025(T)	6-21-05	Repeal	8-1-05
125-025-0000	3-1-05	Repeal	3-1-05	125-055-0030	12-28-04	Amend(T)	2-1-05
125-025-0010	3-1-05	Repeal	3-1-05	125-055-0030	6-21-05	Amend	8-1-05
125-025-0030	3-1-05	Repeal	3-1-05	125-055-0030(T)	6-21-05	Repeal	8-1-05
125-025-0040	3-1-05	Repeal	3-1-05	125-055-0035	12-28-04	Amend(T)	2-1-05
125-025-0050	3-1-05	Repeal	3-1-05	125-055-0035	6-21-05	Amend	8-1-05
125-025-0060	3-1-05	Repeal	3-1-05	125-055-0035(T)	6-21-05	Repeal	8-1-05
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125-025-0080	3-1-05	Repeal	3-1-05	125-055-0040	6-21-05	Amend	8-1-05
125-025-0082	3-1-05	Repeal	3-1-05	125-055-0040(T)	6-21-05	Repeal	8-1-05
125-025-0085	3-1-05	Repeal	3-1-05	125-055-0045	12-28-04	Amend(T)	2-1-05
125-025-0087	3-1-05	Repeal	3-1-05	125-055-0045	6-21-05	Amend	8-1-05
125-025-0090	3-1-05	Repeal	3-1-05	125-055-0045(T)	6-21-05	Repeal	8-1-05
125-025-0100	3-1-05	Repeal	3-1-05	125-055-0100	4-20-05	Amend(T)	6-1-05

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125-055-0110	4-20-05	Suspend	6-1-05	125-145-0105(T)	5-27-05	Repeal	7-1-05
125-055-0115	4-20-05	Amend(T)	6-1-05	125-145-0110	12-1-04	Adopt(T)	1-1-05
125-055-0120	4-20-05	Amend(T)	6-1-05	125-145-0110	2-24-05	Suspend	4-1-05
125-055-0125	4-20-05	Amend(T)	6-1-05	125-145-0120	12-1-04	Adopt(T)	1-1-05
125-055-0130	4-20-05	Amend(T)	6-1-05	125-145-0120	2-24-05	Suspend	4-1-05
125-145-0010	12-1-04	Adopt(T)	1-1-05	125-145-0130	2-24-05	Adopt(T)	4-1-05
125-145-0010	2-24-05	Amend(T)	4-1-05	125-145-0130(T)	5-27-05	Repeal	7-1-05
125-145-0010	5-27-05	Adopt	7-1-05	125-246-0100	3-1-05	Adopt	1-1-05
125-145-0010(T)	2-24-05	Suspend	4-1-05	125-246-0100	6-6-05	Amend	5-1-05
125-145-0010(T)	5-27-05	Repeal	7-1-05	125-246-0100	6-6-05	Amend	7-1-05
125-145-0020	12-1-04	Adopt(T)	1-1-05	125-246-0100	8-3-05	Amend	9-1-05
125-145-0020	2-24-05	Amend(T)	4-1-05	125-246-0110	3-1-05	Adopt	1-1-05
125-145-0020	5-27-05	Adopt	7-1-05	125-246-0110	8-3-05	Amend	9-1-05
125-145-0020(T)	2-24-05	Suspend	4-1-05	125-246-0120	3-1-05	Adopt	1-1-05
125-145-0020(T)	5-27-05	Repeal	7-1-05	125-246-0120	8-3-05	Amend	9-1-05
125-145-0030	12-1-04	Adopt(T)	1-1-05	125-246-0130	3-1-05	Adopt	1-1-05
125-145-0030	2-24-05	Amend(T)	4-1-05	125-246-0140	3-1-05	Adopt	1-1-05
125-145-0030	5-27-05	Adopt	7-1-05	125-246-0150	3-1-05	Adopt	1-1-05
125-145-0030(T)	2-24-05	Suspend	4-1-05	125-246-0170	3-1-05	Adopt	1-1-05
125-145-0030(T)	5-27-05	Repeal	7-1-05	125-246-0170	8-3-05	Amend	9-1-05
125-145-0040	12-1-04	Adopt(T)	1-1-05	125-246-0200	3-1-05	Adopt	1-1-05
125-145-0040	2-24-05	Amend(T)	4-1-05	125-246-0210	3-1-05	Adopt	1-1-05
125-145-0040	5-27-05	Adopt	7-1-05	125-246-0220	3-1-05	Adopt	1-1-05
125-145-0040(T)	2-24-05	Suspend	4-1-05	125-246-0300	3-1-05	Adopt	1-1-05
125-145-0040(T)	5-27-05	Repeal	7-1-05	125-246-0310	3-1-05	Adopt	1-1-05
125-145-0045	12-1-04	Adopt(T)	1-1-05	125-246-0320	3-1-05	Adopt	1-1-05
125-145-0045	2-24-05	Amend(T)	4-1-05	125-246-0321	3-1-05	Adopt	1-1-05
125-145-0045	5-27-05	Adopt	7-1-05	125-246-0322	3-1-05	Adopt	1-1-05
125-145-0045(T)	2-24-05	Suspend	4-1-05	125-246-0323	3-1-05	Adopt	1-1-05
125-145-0045(T)	5-27-05	Repeal	7-1-05	125-246-0324	3-1-05	Adopt	1-1-05
125-145-0050	12-1-04	Adopt(T)	1-1-05	125-246-0330	3-1-05	Adopt	1-1-05
125-145-0050	2-24-05	Suspend	4-1-05	125-246-0335	3-1-05	Adopt	1-1-05
125-145-0060	12-1-04	Adopt(T)	1-1-05	125-246-0345	3-1-05	Adopt	1-1-05
125-145-0060	2-24-05	Amend(T)	4-1-05	125-246-0350	3-1-05	Adopt	1-1-05
125-145-0060	5-27-05	Adopt	7-1-05	125-246-0351	3-1-05	Adopt	1-1-05
125-145-0060(T)	2-24-05	Suspend	4-1-05	125-246-0352	3-1-05	Adopt	1-1-05
125-145-0060(T)	5-27-05	Repeal	7-1-05	125-246-0353	3-1-05	Adopt	1-1-05
125-145-0080	12-1-04	Adopt(T)	1-1-05	125-246-0355	3-1-05	Adopt	1-1-05
125-145-0080	2-24-05	Amend(T)	4-1-05	125-246-0360	3-1-05	Adopt	1-1-05
125-145-0080	5-27-05	Adopt	7-1-05	125-246-0400	3-1-05	Adopt	1-1-05
125-145-0080(T)	2-24-05	Suspend	4-1-05	125-246-0410	3-1-05	Adopt	1-1-05
125-145-0080(T)	5-27-05	Repeal	7-1-05	125-246-0420	3-1-05	Adopt	1-1-05
125-145-0090	12-1-04	Adopt(T)	1-1-05	125-246-0430	3-1-05	Adopt	1-1-05
125-145-0090	2-24-05	Amend(T)	4-1-05	125-246-0440	3-1-05	Adopt	1-1-05
125-145-0090	5-27-05	Adopt	7-1-05	125-246-0450	3-1-05	Adopt	1-1-05
125-145-0090(T)	2-24-05	Suspend	4-1-05	125-246-0460	3-1-05	Adopt	1-1-05
125-145-0090(T)	5-27-05	Repeal	7-1-05	125-246-0470	3-1-05	Adopt	1-1-05
125-145-0100	12-1-04	Adopt(T)	1-1-05	125-246-0500	3-1-05	Adopt	1-1-05
125-145-0100	2-24-05	Amend(T)	4-1-05	125-246-0550	3-1-05	Adopt	1-1-05
125-145-0100	5-27-05	Adopt	7-1-05	125-246-0555	3-1-05	Adopt	1-1-05
125-145-0100(T)	2-24-05	Suspend	4-1-05	125-246-0560	3-1-05	Adopt	1-1-05
125-145-0100(T)	5-27-05	Repeal	7-1-05	125-246-0560	6-6-05	Amend	5-1-05
125-145-0105	12-1-04	Adopt(T)	1-1-05	125-246-0560	6-6-05	Amend	7-1-05
125-145-0105	2-24-05	Amend(T)	4-1-05	125-246-0560	8-3-05	Amend	9-1-05
125-145-0105	5-27-05	Adopt	7-1-05	125-246-0570	3-1-05	Adopt	1-1-05

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125-246-0575	8-3-05	Amend	9-1-05	125-247-0550	3-1-05	Adopt	1-1-05
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125-246-0600	3-1-05	Adopt	1-1-05	125-247-0600	3-1-05	Adopt	1-1-05
125-246-0605	3-1-05	Adopt	1-1-05	125-247-0610	3-1-05	Adopt	1-1-05
125-246-0610	3-1-05	Adopt	1-1-05	125-247-0620	3-1-05	Adopt	1-1-05
125-246-0615	3-1-05	Adopt	1-1-05	125-247-0630	3-1-05	Adopt	1-1-05
125-246-0620	3-1-05	Adopt	1-1-05	125-247-0640	3-1-05	Adopt	1-1-05
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125-246-0630	3-1-05	Adopt	1-1-05	125-247-0660	3-1-05	Adopt	1-1-05
125-246-0635	3-1-05	Adopt	1-1-05	125-247-0670	3-1-05	Adopt	1-1-05
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125-247-0261	8-3-05	Amend	9-1-05	125-248-0240	3-1-05	Adopt	1-1-05
125-247-0265	3-1-05	Adopt	1-1-05	125-248-0250	3-1-05	Adopt	1-1-05
125-247-0270	3-1-05	Adopt	1-1-05	125-248-0260	3-1-05	Adopt	1-1-05
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125-247-0286	3-1-05	Adopt	1-1-05	125-249-0100	3-1-05	Adopt	1-1-05
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125-247-0310	3-1-05	Adopt	1-1-05	125-249-0160	8-3-05	Amend	9-1-05
125-247-0320	3-1-05	Adopt	1-1-05	125-249-0200	3-1-05	Adopt	1-1-05
125-247-0330	3-1-05	Adopt	1-1-05	125-249-0210	3-1-05	Adopt	1-1-05
125-247-0400	3-1-05	Adopt	1-1-05	125-249-0220	3-1-05	Adopt	1-1-05
125-247-0410	3-1-05	Adopt	1-1-05	125-249-0230	3-1-05	Adopt	1-1-05
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125-249-0330	3-1-05	Adopt	1-1-05	125-310-0300	3-1-05	Repeal	3-1-05
125-249-0340	3-1-05	Adopt	1-1-05	125-310-0400	3-1-05	Repeal	3-1-05
125-249-0350	3-1-05	Adopt	1-1-05	125-310-0500	3-1-05	Repeal	3-1-05
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250-015-0032	1-24-05	Adopt	3-1-05	291-022-0140	5-24-05	Adopt	7-1-05
250-015-0033	1-24-05	Adopt	3-1-05	291-022-0150	5-24-05	Adopt	7-1-05
250-020-0204	8-4-05	Amend	9-1-05	291-022-0160	5-24-05	Adopt	7-1-05
250-020-0280	1-20-05	Amend	3-1-05	291-022-0170	5-24-05	Adopt	7-1-05
250-025-0020	12-7-04	Amend(T)	1-1-05	291-022-0180	5-24-05	Adopt	7-1-05
250-025-0020(T)	12-7-04	Suspend	1-1-05	291-022-0190	5-24-05	Adopt	7-1-05
255-005-0005	4-25-05	Amend	6-1-05	291-022-0200	5-24-05	Adopt	7-1-05
255-094-0000	4-25-05	Amend	6-1-05	291-022-0210	5-24-05	Adopt	7-1-05
255-094-0010	4-25-05	Amend	6-1-05	291-047-0005	7-7-05	Amend(T)	8-1-05
257-010-0025	3-1-05	Amend(T)	4-1-05	291-047-0010	7-7-05	Amend(T)	8-1-05
257-010-0035	3-1-05	Amend(T)	4-1-05	291-047-0020	7-7-05	Suspend	8-1-05
257-070-0005	8-21-05	Amend	8-1-05	291-047-0021	7-7-05	Adopt(T)	8-1-05
257-070-0010	8-21-05	Amend	8-1-05	291-047-0025	7-7-05	Suspend	8-1-05
257-070-0015	8-21-05	Amend	8-1-05	291-082-0010	1-7-05	Amend(T)	2-1-05
257-070-0025	8-21-05	Amend	8-1-05	291-082-0010	8-1-05	Amend	9-1-05
257-070-0040	8-21-05	Amend	8-1-05	291-082-0020	1-7-05	Amend(T)	2-1-05
259-008-0040	8-5-05	Amend	9-1-05	291-082-0020	8-1-05	Amend	9-1-05
259-008-0068	4-1-05	Amend(T)	5-1-05	291-082-0021	8-1-05	Am. & Ren.	9-1-05
259-009-0060	1-28-05	Adopt(T)	3-1-05	291-082-0025	8-1-05	Adopt	9-1-05
259-009-0061	8-4-05	Adopt(T)	9-1-05	291-082-0026	8-1-05	Adopt	9-1-05
259-009-0080	5-24-05	Amend	7-1-05	291-082-0027	8-1-05	Adopt	9-1-05
259-009-0085	5-24-05	Amend	7-1-05	291-082-0030	1-7-05	Amend(T)	2-1-05
259-060-0120	5-1-05	Amend(T)	6-1-05	291-082-0031	1-7-05	Adopt(T)	2-1-05
259-060-0300	8-3-05	Amend(T)	9-1-05	291-082-0032	1-7-05	Adopt(T)	2-1-05
259-060-0500	5-1-05	Amend(T)	6-1-05	291-082-0033	1-7-05	Adopt(T)	2-1-05
274-005-0040	4-22-05	Amend	6-1-05	291-086-0010	3-21-05	Amend	5-1-05
274-020-0200	4-22-05	Amend	6-1-05	291-086-0020	3-21-05	Amend	5-1-05
274-020-0341	4-8-05	Amend(T)	5-1-05	291-086-0030	3-21-05	Amend	5-1-05
274-020-0341	4-22-05	Amend	6-1-05	291-086-0040	3-21-05	Amend	5-1-05
274-020-0341(T)	4-22-05	Repeal	6-1-05	291-086-0045	3-21-05	Amend	5-1-05
274-020-0345	6-3-05	Amend(T)	7-1-05	291-086-0046	3-21-05	Adopt	5-1-05
274-020-0345	7-22-05	Amend	9-1-05	291-086-0047	3-21-05	Adopt	5-1-05
274-020-0345(T)	7-22-05	Repeal	9-1-05	291-086-0050	3-21-05	Amend	5-1-05
274-020-0387	4-22-05	Amend	6-1-05	291-086-0060	3-21-05	Adopt	5-1-05
274-020-0388	4-22-05	Amend	6-1-05	291-100-0005	4-13-05	Amend	5-1-05
274-020-0411	4-22-05	Amend	6-1-05	291-100-0008	4-13-05	Amend	5-1-05
274-020-0440	4-22-05	Amend	6-1-05	291-100-0013	4-13-05	Amend	5-1-05
274-021-0005	4-22-05	Amend	6-1-05	291-100-0070	4-13-05	Amend	5-1-05
274-028-0005	4-22-05	Amend	6-1-05	291-100-0080	4-13-05	Amend	5-1-05
274-028-0010	4-22-05	Amend	6-1-05	291-100-0085	4-13-05	Adopt	5-1-05
274-028-0035	4-22-05	Amend	6-1-05	291-100-0090	4-13-05	Amend	5-1-05
274-040-0025	4-22-05	Amend	6-1-05	291-100-0100	4-13-05	Amend	5-1-05
274-045-0001	4-22-05	Amend	6-1-05	291-100-0105	4-13-05	Adopt	5-1-05
274-045-0070	4-22-05	Amend	6-1-05	291-100-0110	4-13-05	Amend	5-1-05
274-045-0080	6-3-05	Amend(T)	7-1-05	291-100-0115	4-13-05	Adopt	5-1-05
274-045-0080	7-22-05	Amend	9-1-05	291-100-0120	4-13-05	Amend	5-1-05
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291-100-0150	4-13-05	Amend	5-1-05	291-180-0195	2-24-05	Adopt	4-1-05
291-100-0160	4-13-05	Adopt	5-1-05	291-180-0205	2-24-05	Adopt	4-1-05
291-105-0005	7-24-05	Amend	9-1-05	291-180-0215	2-24-05	Adopt	4-1-05
291-105-0010	7-24-05	Amend	9-1-05	291-180-0225	2-24-05	Adopt	4-1-05
291-105-0015	7-24-05	Amend	9-1-05	291-180-0235	2-24-05	Adopt	4-1-05
291-105-0021	7-24-05	Amend	9-1-05	291-180-0245	2-24-05	Adopt	4-1-05
291-105-0026	7-24-05	Amend	9-1-05	291-180-0255	2-24-05	Adopt	4-1-05
291-105-0028	7-24-05	Amend	9-1-05	291-180-0265	2-24-05	Adopt	4-1-05
291-105-0031	7-24-05	Amend	9-1-05	291-180-0275	2-24-05	Adopt	4-1-05
291-105-0036	7-24-05	Amend	9-1-05	291-180-0285	2-24-05	Adopt	4-1-05
291-105-0041	7-24-05	Amend	9-1-05	291-180-0295	2-24-05	Adopt	4-1-05
291-105-0046	7-24-05	Amend	9-1-05	291-180-0305	2-24-05	Adopt	4-1-05
291-105-0058	7-24-05	Amend	9-1-05	291-180-0315	2-24-05	Adopt	4-1-05
291-105-0066	7-24-05	Amend	9-1-05	291-180-0325	2-24-05	Adopt	4-1-05
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291-105-0100	7-24-05	Amend	9-1-05	291-180-0375	2-24-05	Adopt	4-1-05
291-127-0200	3-14-05	Amend	4-1-05	291-180-0385	2-24-05	Adopt	4-1-05
291-127-0210	3-14-05	Amend	4-1-05	291-180-0395	2-24-05	Adopt	4-1-05
291-127-0220	3-14-05	Amend	4-1-05	291-180-0405	2-24-05	Adopt	4-1-05
291-127-0230	3-14-05	Amend	4-1-05	291-180-0415	2-24-05	Adopt	4-1-05
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291-127-0250	3-14-05	Amend	4-1-05	291-180-0435	2-24-05	Adopt	4-1-05
291-127-0260	3-14-05	Amend	4-1-05	291-180-0445	2-24-05	Adopt	4-1-05
291-127-0270	3-14-05	Repeal	4-1-05	291-180-0455	2-24-05	Adopt	4-1-05
291-127-0280	3-14-05	Amend	4-1-05	291-180-0465	2-24-05	Adopt	4-1-05
291-127-0285	3-14-05	Adopt	4-1-05	291-180-0475	2-24-05	Adopt	4-1-05
291-127-0290	3-14-05	Amend	4-1-05	291-180-0485	2-24-05	Adopt	4-1-05
291-127-0300	3-14-05	Amend	4-1-05	291-180-0495	2-24-05	Adopt	4-1-05
291-127-0310	3-14-05	Amend	4-1-05	291-180-0505	2-24-05	Adopt	4-1-05
291-127-0320	3-14-05	Amend	4-1-05	291-180-0515	2-24-05	Adopt	4-1-05
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291-131-0015	12-28-04	Amend(T)	2-1-05	291-180-0535	2-24-05	Adopt	4-1-05
291-131-0015	7-1-05	Amend	8-1-05	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
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309-032-1245	1-3-05	Adopt(T)	2-1-05	309-035-0330	4-1-05	Amend	5-1-05
309-032-1245	7-1-05	Adopt	8-1-05	309-035-0340	4-1-05	Amend	5-1-05
309-032-1250	1-3-05	Adopt(T)	2-1-05	309-035-0350	4-1-05	Amend	5-1-05
309-032-1250	7-1-05	Adopt	8-1-05	309-035-0360	4-1-05	Amend	5-1-05
309-032-1255	1-3-05	Adopt(T)	2-1-05	309-035-0370	4-1-05	Amend	5-1-05
309-032-1255	7-1-05	Adopt	8-1-05	309-035-0380	4-1-05	Amend	5-1-05
309-032-1260	1-3-05	Adopt(T)	2-1-05	309-035-0390	4-1-05	Amend	5-1-05
309-032-1260	7-1-05	Adopt	8-1-05	309-035-0400	4-1-05	Amend	5-1-05
309-032-1265	1-3-05	Adopt(T)	2-1-05	309-035-0410	4-1-05	Amend	5-1-05
309-032-1265	7-1-05	Adopt	8-1-05	309-035-0420	4-1-05	Amend	5-1-05
309-032-1270	1-3-05	Adopt(T)	2-1-05	309-035-0430	4-1-05	Amend	5-1-05
309-032-1270	7-1-05	Adopt	8-1-05	309-035-0440	4-1-05	Amend	5-1-05
309-032-1275	1-3-05	Adopt(T)	2-1-05	309-035-0450	4-1-05	Amend	5-1-05
309-032-1275	7-1-05	Adopt	8-1-05	309-035-0460	4-1-05	Amend	5-1-05
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309-032-1280	7-1-05	Adopt	8-1-05	309-040-0005	4-1-05	Am. & Ren.	5-1-05
309-032-1285	1-3-05	Adopt(T)	2-1-05	309-040-0010	4-1-05	Am. & Ren.	5-1-05
309-032-1285	7-1-05	Adopt	8-1-05	309-040-0011	4-1-05	Am. & Ren.	5-1-05
309-032-1290	1-3-05	Adopt(T)	2-1-05	309-040-0012	4-1-05	Am. & Ren.	5-1-05
309-032-1290	7-1-05	Adopt	8-1-05	309-040-0015	4-1-05	Am. & Ren.	5-1-05
309-032-1295	1-3-05	Adopt(T)	2-1-05	309-040-0020	4-1-05	Am. & Ren.	5-1-05
309-032-1295	7-1-05	Adopt	8-1-05	309-040-0025	4-1-05	Am. & Ren.	5-1-05
309-032-1300	1-3-05	Adopt(T)	2-1-05	309-040-0030	4-1-05	Am. & Ren.	5-1-05
309-032-1300	7-1-05	Adopt	8-1-05	309-040-0035	4-1-05	Am. & Ren.	5-1-05
309-032-1305	1-3-05	Adopt(T)	2-1-05	309-040-0040	4-1-05	Am. & Ren.	5-1-05
309-032-1305	7-1-05	Adopt	8-1-05	309-040-0045	4-1-05	Am. & Ren.	5-1-05
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309-035-0113	4-1-05	Amend	5-1-05	309-040-0057	4-1-05	Am. & Ren.	5-1-05
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309-035-0135	4-1-05	Amend	5-1-05	309-040-0092	4-1-05	Am. & Ren.	5-1-05
309-035-0140	4-1-05	Amend	5-1-05	309-040-0093	4-1-05	Am. & Ren.	5-1-05
309-035-0145	4-1-05	Amend	5-1-05	309-040-0095	4-1-05	Am. & Ren.	5-1-05
309-035-0150	4-1-05	Amend	5-1-05	309-040-0097	4-1-05	Am. & Ren.	5-1-05
309-035-0155	4-1-05	Amend	5-1-05	309-040-0098	4-1-05	Am. & Ren.	5-1-05
309-035-0157	4-1-05	Amend	5-1-05	309-040-0099	4-1-05	Am. & Ren.	5-1-05
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309-035-0167	4-1-05	Amend	5-1-05	309-040-0375	4-1-05	Adopt	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
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309-046-0220	1-1-05	Am. & Ren.	1-1-05	333-004-0140	2-18-05	Adopt	4-1-05
309-046-0230	1-1-05	Repeal	1-1-05	333-004-0150	2-18-05	Adopt	4-1-05
309-046-0240	1-1-05	Am. & Ren.	1-1-05	333-004-0160	2-18-05	Adopt	4-1-05
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309-120-0005	7-7-05	Amend(T)	8-1-05	333-004-0180	2-18-05	Adopt	4-1-05
309-120-0015	7-7-05	Suspend	8-1-05	333-004-0190	2-18-05	Adopt	4-1-05
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309-120-0070	7-15-05	Adopt(T)	8-1-05	333-017-0000	7-5-05	Amend	8-1-05
309-120-0075	7-15-05	Adopt(T)	8-1-05	333-018-0005	7-5-05	Amend	8-1-05
309-120-0080	7-15-05	Adopt(T)	8-1-05	333-018-0010	7-5-05	Amend	8-1-05
325-001-0005	6-8-05	Adopt	7-1-05	333-018-0015	7-5-05	Amend	8-1-05
325-005-0010	7-1-05	Adopt(T)	7-1-05	333-018-0018	7-5-05	Amend	8-1-05
330-100-0000	12-20-04	Amend	2-1-05	333-019-0002	7-5-05	Amend	8-1-05
330-100-0005	12-20-04	Amend	2-1-05	333-019-0005	7-5-05	Amend	8-1-05
330-105-0005	12-20-04	Amend	2-1-05	333-019-0010	7-5-05	Amend	8-1-05
330-105-0007	12-20-04	Amend	2-1-05	333-019-0015	7-5-05	Repeal	8-1-05
330-105-0008	12-20-04	Amend	2-1-05	333-019-0017	7-5-05	Amend	8-1-05
330-105-0015	12-20-04	Amend	2-1-05	333-019-0041	6-21-05	Amend	7-1-05
330-105-0020	12-20-04	Amend	2-1-05	333-024-0210	12-7-04	Amend	1-1-05
330-105-0025	12-20-04	Amend	2-1-05	333-024-0210(T)	12-7-04	Repeal	1-1-05
330-105-0030	12-20-04	Amend	2-1-05	333-024-0215	12-7-04	Amend	1-1-05
330-105-0035	12-20-04	Amend	2-1-05	333-024-0215(T)	12-7-04	Repeal	1-1-05
330-105-0040	12-20-04	Amend	2-1-05	333-024-0220	12-7-04	Amend	1-1-05
330-105-0045	12-20-04	Amend	2-1-05	333-024-0220(T)	12-7-04	Repeal	1-1-05
330-110-0005	12-20-04	Amend	2-1-05	333-024-0225	12-7-04	Amend	1-1-05
330-110-0010	12-20-04	Amend	2-1-05	333-024-0225(T)	12-7-04	Repeal	1-1-05
330-110-0015	12-20-04	Amend	2-1-05	333-024-0230	12-7-04	Amend	1-1-05
330-110-0016	12-20-04	Amend	2-1-05	333-024-0230(T)	12-7-04	Repeal	1-1-05
330-110-0020	12-20-04	Amend	2-1-05	333-024-0231	12-7-04	Amend	1-1-05
330-110-0025	12-20-04	Amend	2-1-05	333-024-0231(T)	12-7-04	Repeal	1-1-05
330-110-0030	12-20-04	Amend	2-1-05	333-024-0232	12-7-04	Amend	1-1-05
330-110-0035	12-20-04	Amend	2-1-05	333-024-0232(T)	12-7-04	Repeal	1-1-05
330-110-0036	12-20-04	Amend	2-1-05	333-024-0235	12-7-04	Amend	1-1-05
330-110-0040	12-20-04	Amend	2-1-05	333-024-0235(T)	12-7-04	Repeal	1-1-05
330-110-0042	12-20-04	Amend	2-1-05	333-024-0240	12-7-04	Amend	1-1-05
330-110-0045	12-20-04	Amend	2-1-05	333-024-0240(T)	12-7-04	Repeal	1-1-05
330-110-0050	12-20-04	Amend	2-1-05	333-024-0241	12-7-04	Adopt	1-1-05
330-110-0055	12-20-04	Amend	2-1-05	333-024-0241(T)	12-7-04	Repeal	1-1-05
331-710-0010	3-1-05	Amend	4-1-05	333-029-0015	1-14-05	Amend	2-1-05
331-715-0010	3-1-05	Amend	4-1-05	333-029-0050	1-14-05	Amend	2-1-05
331-720-0010	3-1-05	Amend	4-1-05	333-029-0075	1-14-05	Amend	2-1-05
333-004-0000	2-18-05	Adopt	4-1-05	333-030-0015	1-14-05	Amend	2-1-05
333-004-0010	2-18-05	Adopt	4-1-05	333-030-0040	1-14-05	Amend	2-1-05
333-004-0020	2-18-05	Adopt	4-1-05	333-030-0045	1-14-05	Amend	2-1-05
333-004-0030	2-18-05	Adopt	4-1-05	333-030-0050	1-14-05	Amend	2-1-05
333-004-0040	2-18-05	Adopt	4-1-05	333-030-0080	1-14-05	Amend	2-1-05
333-004-0050	2-18-05	Adopt	4-1-05	333-030-0085	1-14-05	Amend	2-1-05
333-004-0060	2-18-05	Adopt	4-1-05	333-030-0120	1-14-05	Amend	2-1-05
333-004-0070	2-18-05	Adopt	4-1-05	333-031-0002	1-14-05	Amend	2-1-05
333-004-0080	2-18-05	Adopt	4-1-05	333-031-0004	1-14-05	Amend	2-1-05
333-004-0090	2-18-05	Adopt	4-1-05	333-031-0006	1-14-05	Amend	2-1-05

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333-031-0012	1-14-05	Amend	2-1-05	333-101-0010(T)	12-1-04	Repeal	1-1-05
333-031-0018	1-14-05	Amend	2-1-05	333-101-0020	4-11-05	Amend	5-1-05
333-031-0066	1-14-05	Amend	2-1-05	333-102-0001	12-1-04	Amend	1-1-05
333-039-0015	7-21-05	Amend(T)	9-1-05	333-102-0001(T)	12-1-04	Repeal	1-1-05
333-049-0065	4-13-05	Adopt	5-1-05	333-102-0005	12-1-04	Amend	1-1-05
333-050-0010	2-3-05	Amend	3-1-05	333-102-0005(T)	12-1-04	Repeal	1-1-05
333-050-0010(T)	2-3-05	Repeal	3-1-05	333-102-0010	12-1-04	Amend	1-1-05
333-050-0020	2-3-05	Amend	3-1-05	333-102-0010(T)	12-1-04	Repeal	1-1-05
333-050-0020(T)	2-3-05	Repeal	3-1-05	333-102-0015	12-1-04	Amend	1-1-05
333-050-0030	2-3-05	Amend	3-1-05	333-102-0015(T)	12-1-04	Repeal	1-1-05
333-050-0030(T)	2-3-05	Repeal	3-1-05	333-102-0020	12-1-04	Amend	1-1-05
333-050-0040	2-3-05	Amend	3-1-05	333-102-0020(T)	12-1-04	Repeal	1-1-05
333-050-0040(T)	2-3-05	Repeal	3-1-05	333-102-0025	12-1-04	Amend	1-1-05
333-050-0050	2-3-05	Amend	3-1-05	333-102-0025(T)	12-1-04	Repeal	1-1-05
333-050-0050(T)	2-3-05	Repeal	3-1-05	333-102-0030	12-1-04	Amend	1-1-05
333-050-0060	2-3-05	Amend	3-1-05	333-102-0030(T)	12-1-04	Repeal	1-1-05
333-050-0060(T)	2-3-05	Repeal	3-1-05	333-102-0035	12-1-04	Amend	1-1-05
333-050-0080	2-3-05	Amend	3-1-05	333-102-0035(T)	12-1-04	Repeal	1-1-05
333-050-0080(T)	2-3-05	Repeal	3-1-05	333-102-0040	12-1-04	Adopt	1-1-05
333-050-0090	2-3-05	Amend	3-1-05	333-102-0040(T)	12-1-04	Repeal	1-1-05
333-050-0090(T)	2-3-05	Repeal	3-1-05	333-102-0075	12-1-04	Amend	1-1-05
333-050-0100	2-3-05	Amend	3-1-05	333-102-0075(T)	12-1-04	Repeal	1-1-05
333-050-0100(T)	2-3-05	Repeal	3-1-05	333-102-0101	12-1-04	Amend	1-1-05
333-050-0130	2-3-05	Amend	3-1-05	333-102-0101(T)	12-1-04	Repeal	1-1-05
333-050-0130(T)	2-3-05	Repeal	3-1-05	333-102-0103	12-1-04	Amend	1-1-05
333-050-0140	2-3-05	Amend	3-1-05	333-102-0103(T)	12-1-04	Repeal	1-1-05
333-050-0140(T)	2-3-05	Repeal	3-1-05	333-102-0105	12-1-04	Amend	1-1-05
333-050-0141(T)	2-3-05	Repeal	3-1-05	333-102-0105(T)	12-1-04	Repeal	1-1-05
333-054-0010	5-2-05	Amend(T)	6-1-05	333-102-0110	12-1-04	Amend	1-1-05
333-054-0020	5-2-05	Amend(T)	6-1-05	333-102-0110(T)	12-1-04	Repeal	1-1-05
333-054-0030	5-2-05	Amend(T)	6-1-05	333-102-0120	12-1-04	Amend	1-1-05
333-054-0050	5-2-05	Amend(T)	6-1-05	333-102-0120(T)	12-1-04	Repeal	1-1-05
333-054-0060	5-2-05	Amend(T)	6-1-05	333-102-0125	12-1-04	Amend	1-1-05
333-054-0100	5-2-05	Amend(T)	6-1-05	333-102-0125(T)	12-1-04	Repeal	1-1-05
333-064-0025	7-1-05	Amend	7-1-05	333-102-0130	12-1-04	Amend	1-1-05
333-064-0035	7-1-05	Amend	7-1-05	333-102-0130(T)	12-1-04	Repeal	1-1-05
333-064-0070	7-1-05	Amend	7-1-05	333-102-0135	12-1-04	Amend	1-1-05
333-100-0001	12-1-04	Amend	1-1-05	333-102-0135(T)	12-1-04	Repeal	1-1-05
333-100-0001(T)	12-1-04	Repeal	1-1-05	333-102-0190	12-1-04	Adopt	1-1-05
333-100-0005	12-1-04	Amend	1-1-05	333-102-0190(T)	12-1-04	Repeal	1-1-05
333-100-0005(T)	12-1-04	Repeal	1-1-05	333-102-0200	12-1-04	Amend	1-1-05
333-100-0057	12-1-04	Adopt	1-1-05	333-102-0200(T)	12-1-04	Repeal	1-1-05
333-100-0057(T)	12-1-04	Repeal	1-1-05	333-102-0203	12-1-04	Amend	1-1-05
333-100-0060	12-1-04	Amend	1-1-05	333-102-0203(T)	12-1-04	Repeal	1-1-05
333-100-0060(T)	12-1-04	Repeal	1-1-05	333-102-0225	12-1-04	Repeal	1-1-05
333-100-0065	12-1-04	Amend	1-1-05	333-102-0235	12-1-04	Amend	1-1-05
333-100-0065(T)	12-1-04	Repeal	1-1-05	333-102-0235(T)	12-1-04	Repeal	1-1-05
333-100-0070	12-1-04	Amend	1-1-05	333-102-0240	12-1-04	Repeal	1-1-05
333-100-0070(T)	12-1-04	Repeal	1-1-05	333-102-0245	12-1-04	Amend	1-1-05
333-100-0080	12-1-04	Adopt	1-1-05	333-102-0245(T)	12-1-04	Repeal	1-1-05
333-100-0080(T)	12-1-04	Repeal	1-1-05	333-102-0247	12-1-04	Adopt	1-1-05
333-101-0001	12-1-04	Amend	1-1-05	333-102-0247(T)	12-1-04	Repeal	1-1-05
333-101-0001(T)	12-1-04	Repeal	1-1-05	333-102-0250	12-1-04	Amend	1-1-05
333-101-0003	12-1-04	Adopt	1-1-05	333-102-0250(T)	12-1-04	Repeal	1-1-05
333-101-0003(T)	12-1-04	Repeal	1-1-05	333-102-0255	12-1-04	Amend	1-1-05

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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
333-102-0315	12-1-04	Amend	1-1-05	333-105-0440(T)	12-1-04	Repeal	1-1-05
333-102-0315(T)	12-1-04	Repeal	1-1-05	333-105-0450	12-1-04	Adopt	1-1-05
333-102-0327	12-1-04	Amend	1-1-05	333-105-0450(T)	12-1-04	Repeal	1-1-05
333-102-0327(T)	12-1-04	Repeal	1-1-05	333-105-0460	12-1-04	Adopt	1-1-05
333-102-0330	12-1-04	Amend	1-1-05	333-105-0460(T)	12-1-04	Repeal	1-1-05
333-102-0330(T)	12-1-04	Repeal	1-1-05	333-105-0470	12-1-04	Adopt	1-1-05
333-102-0335	12-1-04	Amend	1-1-05	333-105-0470(T)	12-1-04	Repeal	1-1-05
333-102-0335(T)	12-1-04	Repeal	1-1-05	333-105-0480	12-1-04	Adopt	1-1-05
333-102-0340	12-1-04	Amend	1-1-05	333-105-0480(T)	12-1-04	Repeal	1-1-05
333-102-0340(T)	12-1-04	Repeal	1-1-05	333-105-0490	12-1-04	Adopt	1-1-05
333-102-0350	12-1-04	Adopt	1-1-05	333-105-0490(T)	12-1-04	Repeal	1-1-05
333-102-0350(T)	12-1-04	Repeal	1-1-05	333-105-0500	12-1-04	Adopt	1-1-05
333-102-0355	12-1-04	Adopt	1-1-05	333-105-0500(T)	12-1-04	Repeal	1-1-05
333-102-0355(T)	12-1-04	Repeal	1-1-05	333-105-0510	12-1-04	Adopt	1-1-05
333-102-0360	12-1-04	Adopt	1-1-05	333-105-0510(T)	12-1-04	Repeal	1-1-05
333-102-0360(T)	12-1-04	Repeal	1-1-05	333-105-0520	12-1-04	Adopt	1-1-05
333-102-0365	12-1-04	Adopt	1-1-05	333-105-0520(T)	12-1-04	Repeal	1-1-05
333-102-0365(T)	12-1-04	Repeal	1-1-05	333-105-0530	12-1-04	Adopt	1-1-05
333-103-0015	12-1-04	Amend	1-1-05	333-105-0530(T)	12-1-04	Repeal	1-1-05
333-103-0015(T)	12-1-04	Repeal	1-1-05	333-105-0540	12-1-04	Adopt	1-1-05
333-105-0001	12-1-04	Amend	1-1-05	333-105-0540(T)	12-1-04	Repeal	1-1-05
333-105-0001(T)	12-1-04	Repeal	1-1-05	333-105-0550	12-1-04	Adopt	1-1-05
333-105-0003	12-1-04	Adopt	1-1-05	333-105-0550(T)	12-1-04	Repeal	1-1-05
333-105-0003(T)	12-1-04	Repeal	1-1-05	333-105-0560	12-1-04	Adopt	1-1-05
333-105-0005	12-1-04	Amend	1-1-05	333-105-0560(T)	12-1-04	Repeal	1-1-05
333-105-0005(T)	12-1-04	Repeal	1-1-05	333-105-0570	12-1-04	Adopt	1-1-05
333-105-0050	12-1-04	Adopt	1-1-05	333-105-0570(T)	12-1-04	Repeal	1-1-05
333-105-0050(T)	12-1-04	Repeal	1-1-05	333-105-0580	12-1-04	Adopt	1-1-05
333-105-0075	12-1-04	Adopt	1-1-05	333-105-0580(T)	12-1-04	Repeal	1-1-05
333-105-0075(T)	12-1-04	Repeal	1-1-05	333-105-0590	12-1-04	Adopt	1-1-05
333-105-0101	12-1-04	Repeal	1-1-05	333-105-0590(T)	12-1-04	Repeal	1-1-05
333-105-0105	12-1-04	Repeal	1-1-05	333-105-0600	12-1-04	Adopt	1-1-05
333-105-0110	12-1-04	Repeal	1-1-05	333-105-0600(T)	12-1-04	Repeal	1-1-05

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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
333-105-0720(T)	12-1-04	Repeal	1-1-05	333-116-0035	12-1-04	Adopt	1-1-05
333-105-0730	12-1-04	Adopt	1-1-05	333-116-0035(T)	12-1-04	Repeal	1-1-05
333-105-0730(T)	12-1-04	Repeal	1-1-05	333-116-0040	12-1-04	Amend	1-1-05
333-105-0740	12-1-04	Adopt	1-1-05	333-116-0040(T)	12-1-04	Repeal	1-1-05
333-105-0740(T)	12-1-04	Repeal	1-1-05	333-116-0050	12-1-04	Amend	1-1-05
333-105-0750	12-1-04	Adopt	1-1-05	333-116-0050(T)	12-1-04	Repeal	1-1-05
333-105-0750(T)	12-1-04	Repeal	1-1-05	333-116-0055	12-1-04	Adopt	1-1-05
333-105-0760	12-1-04	Adopt	1-1-05	333-116-0055(T)	12-1-04	Repeal	1-1-05
333-105-0760(T)	12-1-04	Repeal	1-1-05	333-116-0057	12-1-04	Adopt	1-1-05
333-106-0005	12-1-04	Amend	1-1-05	333-116-0057(T)	12-1-04	Repeal	1-1-05
333-106-0005	4-11-05	Amend	5-1-05	333-116-0059	12-1-04	Adopt	1-1-05
333-106-0005(T)	12-1-04	Repeal	1-1-05	333-116-0059(T)	12-1-04	Repeal	1-1-05
333-106-0035	12-1-04	Amend	1-1-05	333-116-0070	12-1-04	Amend	1-1-05
333-106-0035(T)	12-1-04	Repeal	1-1-05	333-116-0070(T)	12-1-04	Repeal	1-1-05
333-106-0045	12-1-04	Amend	1-1-05	333-116-0080	12-1-04	Amend	1-1-05
333-106-0045	4-11-05	Amend	5-1-05	333-116-0080(T)	12-1-04	Repeal	1-1-05
333-106-0045(T)	12-1-04	Repeal	1-1-05	333-116-0090	12-1-04	Amend	1-1-05
333-106-0055	12-1-04	Amend	1-1-05	333-116-0090(T)	12-1-04	Repeal	1-1-05
333-106-0055	4-11-05	Amend	5-1-05	333-116-0100	12-1-04	Amend	1-1-05
333-106-0055(T)	12-1-04	Repeal	1-1-05	333-116-0100(T)	12-1-04	Repeal	1-1-05
333-106-0101	12-1-04	Amend	1-1-05	333-116-0105	12-1-04	Adopt	1-1-05
333-106-0101	4-11-05	Amend	5-1-05	333-116-0105(T)	12-1-04	Repeal	1-1-05
333-106-0101(T)	12-1-04	Repeal	1-1-05	333-116-0107	12-1-04	Adopt	1-1-05
333-106-0105	12-1-04	Amend	1-1-05	333-116-0107(T)	12-1-04	Repeal	1-1-05
333-106-0105(T)	12-1-04	Repeal	1-1-05	333-116-0120	12-1-04	Amend	1-1-05
333-106-0210	12-1-04	Amend	1-1-05	333-116-0120(T)	12-1-04	Repeal	1-1-05
333-106-0210(T)	12-1-04	Repeal	1-1-05	333-116-0125	12-1-04	Amend	1-1-05
333-106-0220	12-1-04	Amend	1-1-05	333-116-0125(T)	12-1-04	Repeal	1-1-05
333-106-0220(T)	12-1-04	Repeal	1-1-05	333-116-0140	12-1-04	Amend	1-1-05
333-106-0325	12-1-04	Amend	1-1-05	333-116-0140(T)	12-1-04	Repeal	1-1-05
333-106-0325(T)	12-1-04	Repeal	1-1-05	333-116-0150	12-1-04	Amend	1-1-05
333-106-0370	4-11-05	Amend	5-1-05	333-116-0150(T)	12-1-04	Repeal	1-1-05
333-106-0512	4-11-05	Amend	5-1-05	333-116-0160	12-1-04	Amend	1-1-05

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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
333-116-0320	12-1-04	Amend	1-1-05	333-116-0580(T)	12-1-04	Repeal	1-1-05
333-116-0320(T)	12-1-04	Repeal	1-1-05	333-116-0583	12-1-04	Adopt	1-1-05
333-116-0330	12-1-04	Amend	1-1-05	333-116-0583(T)	12-1-04	Repeal	1-1-05
333-116-0330(T)	12-1-04	Repeal	1-1-05	333-116-0585	12-1-04	Adopt	1-1-05
333-116-0340	12-1-04	Amend	1-1-05	333-116-0585(T)	12-1-04	Repeal	1-1-05
333-116-0340(T)	12-1-04	Repeal	1-1-05	333-116-0587	12-1-04	Adopt	1-1-05
333-116-0350	12-1-04	Amend	1-1-05	333-116-0587(T)	12-1-04	Repeal	1-1-05
333-116-0350(T)	12-1-04	Repeal	1-1-05	333-116-0590	12-1-04	Amend	1-1-05
333-116-0360	12-1-04	Amend	1-1-05	333-116-0590(T)	12-1-04	Repeal	1-1-05
333-116-0360(T)	12-1-04	Repeal	1-1-05	333-116-0600	12-1-04	Amend	1-1-05
333-116-0370	12-1-04	Amend	1-1-05	333-116-0600(T)	12-1-04	Repeal	1-1-05
333-116-0370(T)	12-1-04	Repeal	1-1-05	333-116-0605	12-1-04	Adopt	1-1-05
333-116-0380	12-1-04	Amend	1-1-05	333-116-0605(T)	12-1-04	Repeal	1-1-05
333-116-0380(T)	12-1-04	Repeal	1-1-05	333-116-0610	12-1-04	Amend	1-1-05
333-116-0390	12-1-04	Amend	1-1-05	333-116-0610(T)	12-1-04	Repeal	1-1-05
333-116-0390(T)	12-1-04	Repeal	1-1-05	333-116-0640	12-1-04	Amend	1-1-05
333-116-0410	12-1-04	Amend	1-1-05	333-116-0640(T)	12-1-04	Repeal	1-1-05
333-116-0410(T)	12-1-04	Repeal	1-1-05	333-116-0660	12-1-04	Amend	1-1-05
333-116-0420	12-1-04	Amend	1-1-05	333-116-0660	4-11-05	Amend	5-1-05
333-116-0420(T)	12-1-04	Repeal	1-1-05	333-116-0660(T)	12-1-04	Repeal	1-1-05
333-116-0430	12-1-04	Amend	1-1-05	333-116-0670	12-1-04	Amend	1-1-05
333-116-0430(T)	12-1-04	Repeal	1-1-05	333-116-0670(T)	12-1-04	Repeal	1-1-05
333-116-0440	12-1-04	Amend	1-1-05	333-116-0680	12-1-04	Amend	1-1-05
333-116-0440(T)	12-1-04	Repeal	1-1-05	333-116-0680	4-11-05	Amend	5-1-05
333-116-0450	12-1-04	Amend	1-1-05	333-116-0680(T)	12-1-04	Repeal	1-1-05
333-116-0450(T)	12-1-04	Repeal	1-1-05	333-116-0720	12-1-04	Amend	1-1-05
333-116-0460	12-1-04	Amend	1-1-05	333-116-0720(T)	12-1-04	Repeal	1-1-05
333-116-0460(T)	12-1-04	Repeal	1-1-05	333-116-0730	12-1-04	Amend	1-1-05
333-116-0470	12-1-04	Amend	1-1-05	333-116-0730(T)	12-1-04	Repeal	1-1-05
333-116-0470(T)	12-1-04	Repeal	1-1-05	333-116-0830	12-1-04	Amend	1-1-05
333-116-0480	12-1-04	Amend	1-1-05	333-116-0830(T)	12-1-04	Repeal	1-1-05
333-116-0480(T)	12-1-04	Repeal	1-1-05	333-116-0860	4-11-05	Amend	5-1-05
333-116-0490	12-1-04	Amend	1-1-05	333-116-0880	4-11-05	Amend	5-1-05

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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
333-118-0110(T)	12-1-04	Repeal	1-1-05	333-120-0220(T)	12-1-04	Repeal	1-1-05
333-118-0120	12-1-04	Amend	1-1-05	333-120-0230	12-1-04	Amend	1-1-05
333-118-0120(T)	12-1-04	Repeal	1-1-05	333-120-0230(T)	12-1-04	Repeal	1-1-05
333-118-0130	12-1-04	Amend	1-1-05	333-120-0240	12-1-04	Amend	1-1-05
333-118-0130(T)	12-1-04	Repeal	1-1-05	333-120-0240(T)	12-1-04	Repeal	1-1-05
333-118-0140	12-1-04	Amend	1-1-05	333-120-0250	12-1-04	Amend	1-1-05
333-118-0140(T)	12-1-04	Repeal	1-1-05	333-120-0250(T)	12-1-04	Repeal	1-1-05
333-118-0150	12-1-04	Amend	1-1-05	333-120-0320	12-1-04	Amend	1-1-05
333-118-0150(T)	12-1-04	Repeal	1-1-05	333-120-0320(T)	12-1-04	Repeal	1-1-05
333-118-0160	12-1-04	Amend	1-1-05	333-120-0400	12-1-04	Amend	1-1-05
333-118-0160(T)	12-1-04	Repeal	1-1-05	333-120-0400(T)	12-1-04	Repeal	1-1-05
333-118-0170	12-1-04	Amend	1-1-05	333-120-0420	12-1-04	Amend	1-1-05
333-118-0170(T)	12-1-04	Repeal	1-1-05	333-120-0420(T)	12-1-04	Repeal	1-1-05
333-118-0180	12-1-04	Amend	1-1-05	333-120-0430	12-1-04	Amend	1-1-05
333-118-0180(T)	12-1-04	Repeal	1-1-05	333-120-0430(T)	12-1-04	Repeal	1-1-05
333-118-0190	12-1-04	Amend	1-1-05	333-120-0450	12-1-04	Amend	1-1-05
333-118-0190(T)	12-1-04	Repeal	1-1-05	333-120-0450(T)	12-1-04	Repeal	1-1-05
333-118-0200	12-1-04	Amend	1-1-05	333-120-0460	12-1-04	Amend	1-1-05
333-118-0200(T)	12-1-04	Repeal	1-1-05	333-120-0460(T)	12-1-04	Repeal	1-1-05
333-118-0800	12-1-04	Adopt	1-1-05	333-120-0520	12-1-04	Amend	1-1-05
333-118-0800(T)	12-1-04	Repeal	1-1-05	333-120-0520(T)	12-1-04	Repeal	1-1-05
333-119-0030	12-1-04	Amend	1-1-05	333-120-0540	12-1-04	Amend	1-1-05
333-119-0030(T)	12-1-04	Repeal	1-1-05	333-120-0540(T)	12-1-04	Repeal	1-1-05
333-119-0040	12-1-04	Amend	1-1-05	333-120-0550	12-1-04	Amend	1-1-05
333-119-0040(T)	12-1-04	Repeal	1-1-05	333-120-0550(T)	12-1-04	Repeal	1-1-05
333-119-0080	12-1-04	Amend	1-1-05	333-120-0560	12-1-04	Amend	1-1-05
333-119-0080(T)	12-1-04	Repeal	1-1-05	333-120-0560(T)	12-1-04	Repeal	1-1-05
333-119-0090	12-1-04	Amend	1-1-05	333-120-0600	12-1-04	Amend	1-1-05
333-119-0090(T)	12-1-04	Repeal	1-1-05	333-120-0600(T)	12-1-04	Repeal	1-1-05
333-119-0100	12-1-04	Amend	1-1-05	333-120-0610	12-1-04	Amend	1-1-05
333-119-0100(T)	12-1-04	Repeal	1-1-05	333-120-0610(T)	12-1-04	Repeal	1-1-05
333-119-0120	12-1-04	Amend	1-1-05	333-120-0640	12-1-04	Amend	1-1-05
333-119-0120(T)	12-1-04	Repeal	1-1-05	333-120-0640(T)	12-1-04	Repeal	1-1-05

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333-120-0650(T)	12-1-04	Repeal	1-1-05	333-535-0300	8-15-05	Amend	9-1-05
333-120-0660	12-1-04	Amend	1-1-05	333-535-0310	8-15-05	Amend	9-1-05
333-120-0660(T)	12-1-04	Repeal	1-1-05	333-700-0130	8-15-05	Amend	9-1-05
333-120-0670	12-1-04	Amend	1-1-05	334-001-0012	6-24-05	Amend(T)	8-1-05
333-120-0670(T)	12-1-04	Repeal	1-1-05	334-001-0012	7-1-05	Amend	8-1-05
333-120-0680	12-1-04	Amend	1-1-05	334-001-0045	7-1-05	Amend	8-1-05
333-120-0680(T)	12-1-04	Repeal	1-1-05	334-010-0050	2-23-05	Amend	4-1-05
333-120-0700	12-1-04	Amend	1-1-05	339-010-0005	8-11-05	Amend	9-1-05
333-120-0700(T)	12-1-04	Repeal	1-1-05	339-010-0016	8-11-05	Adopt	9-1-05
333-120-0710	12-1-04	Amend	1-1-05	339-010-0050	8-11-05	Amend	9-1-05
333-120-0710(T)	12-1-04	Repeal	1-1-05	339-020-0010	8-11-05	Amend	9-1-05
333-120-0720	12-1-04	Amend	1-1-05	339-020-0020	8-11-05	Amend	9-1-05
333-120-0720(T)	12-1-04	Repeal	1-1-05	339-020-0030	8-11-05	Repeal	9-1-05
333-121-0001	4-11-05	Adopt	5-1-05	339-020-0040	8-11-05	Repeal	9-1-05
333-121-0010	4-11-05	Adopt	5-1-05	339-020-0050	8-11-05	Repeal	9-1-05
333-121-0020	4-11-05	Adopt	5-1-05	339-020-0060	8-11-05	Repeal	9-1-05
333-121-0030	4-11-05	Adopt	5-1-05	339-020-0070	8-11-05	Repeal	9-1-05
333-121-0040	4-11-05	Adopt	5-1-05	339-020-0100	8-11-05	Amend	9-1-05
333-121-0050	4-11-05	Adopt	5-1-05	340-012-0026	6-1-05	Amend	6-1-05
333-121-0060	4-11-05	Adopt	5-1-05	340-012-0027	6-1-05	Adopt	6-1-05
333-121-0100	4-11-05	Adopt	5-1-05	340-012-0028	6-1-05	Amend	6-1-05
333-121-0110	4-11-05	Adopt	5-1-05	340-012-0030	6-1-05	Amend	6-1-05
333-121-0120	4-11-05	Adopt	5-1-05	340-012-0040	6-1-05	Am. & Ren.	6-1-05
333-121-0130	4-11-05	Adopt	5-1-05	340-012-0041	6-1-05	Amend	6-1-05
333-121-0140	4-11-05	Adopt	5-1-05	340-012-0042	6-1-05	Am. & Ren.	6-1-05
333-121-0150	4-11-05	Adopt	5-1-05	340-012-0045	6-1-05	Amend	6-1-05
333-121-0160	4-11-05	Adopt	5-1-05	340-012-0046	6-1-05	Repeal	6-1-05
333-121-0170	4-11-05	Adopt	5-1-05	340-012-0047	6-1-05	Am. & Ren.	6-1-05
333-121-0180	4-11-05	Adopt	5-1-05	340-012-0048	6-1-05	Am. & Ren.	6-1-05
333-121-0190	4-11-05	Adopt	5-1-05	340-012-0049	6-1-05	Am. & Ren.	6-1-05
333-121-0200	4-11-05	Adopt	5-1-05	340-012-0050	6-1-05	Am. & Ren.	6-1-05
333-121-0300	4-11-05	Adopt	5-1-05	340-012-0052	6-1-05	Repeal	6-1-05
333-121-0310	4-11-05	Adopt	5-1-05	340-012-0053	6-1-05	Adopt	6-1-05
333-121-0320	4-11-05	Adopt	5-1-05	340-012-0055	6-1-05	Amend	6-1-05
333-121-0330	4-11-05	Adopt	5-1-05	340-012-0060	3-1-05	Amend	3-1-05
333-121-0340	4-11-05	Adopt	5-1-05	340-012-0065	6-1-05	Amend	6-1-05
333-121-0350	4-11-05	Adopt	5-1-05	340-012-0066	6-1-05	Amend	6-1-05
333-121-0360	4-11-05	Adopt	5-1-05	340-012-0067	6-1-05	Amend	6-1-05
333-121-0370	4-11-05	Adopt	5-1-05	340-012-0068	6-1-05	Amend	6-1-05
333-121-0380	4-11-05	Adopt	5-1-05	340-012-0071	6-1-05	Amend	6-1-05
333-121-0390	4-11-05	Adopt	5-1-05	340-012-0072	6-1-05	Amend	6-1-05
333-121-0500	4-11-05	Adopt	5-1-05	340-012-0073	6-1-05	Amend	6-1-05
333-121-0510	4-11-05	Adopt	5-1-05	340-012-0074	6-1-05	Adopt	6-1-05
333-150-0000	1-14-05	Amend	2-1-05	340-012-0079	6-1-05	Adopt	6-1-05
333-505-0007	2-4-05	Amend	3-1-05	340-012-0081	6-1-05	Amend	6-1-05
333-535-0025	8-15-05	Amend	9-1-05	340-012-0082	6-1-05	Amend	6-1-05
333-535-0061	8-15-05	Amend	9-1-05	340-012-0083	6-1-05	Amend	6-1-05
333-535-0080	8-15-05	Amend	9-1-05	340-012-0090	6-1-05	Am. & Ren.	6-1-05
333-535-0085	8-15-05	Amend	9-1-05	340-012-0097	6-1-05	Adopt	6-1-05
333-535-0090	8-15-05	Amend	9-1-05	340-012-0130	6-1-05	Adopt	6-1-05
333-535-0100	8-15-05	Amend	9-1-05	340-012-0145	6-1-05	Adopt	6-1-05
333-535-0110	8-15-05	Amend	9-1-05	340-012-0150	6-1-05	Adopt	6-1-05
333-535-0115	8-15-05	Amend	9-1-05	340-012-0160	6-1-05	Adopt	6-1-05
333-535-0120	8-15-05	Amend	9-1-05	340-012-0162	6-1-05	Adopt	6-1-05
333-535-0260	8-15-05	Amend	9-1-05	340-016-0055	11-19-04	Amend	1-1-05

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340-045-0070	7-1-05	Amend	8-1-05	340-071-0500	3-1-05	Amend	2-1-05
340-045-0075	7-1-05	Amend	8-1-05	340-071-0520	3-1-05	Amend	2-1-05
340-071-0100	3-1-05	Amend	2-1-05	340-071-0600	3-1-05	Amend	2-1-05
340-071-0110	3-1-05	Amend	2-1-05	340-071-0650	3-1-05	Adopt	2-1-05
340-071-0115	3-1-05	Amend	2-1-05	340-073-0025	3-1-05	Amend	2-1-05
340-071-0116	3-1-05	Am. & Ren.	2-1-05	340-073-0026	3-1-05	Amend	2-1-05
340-071-0117	3-1-05	Am. & Ren.	2-1-05	340-073-0030	3-1-05	Amend	2-1-05
340-071-0120	3-1-05	Amend	2-1-05	340-073-0035	3-1-05	Amend	2-1-05
340-071-0130	3-1-05	Amend	2-1-05	340-073-0040	3-1-05	Amend	2-1-05
340-071-0131	3-1-05	Adopt	2-1-05	340-073-0041	3-1-05	Amend	2-1-05
340-071-0140	3-1-05	Amend	2-1-05	340-073-0045	3-1-05	Amend	2-1-05
340-071-0150	3-1-05	Amend	2-1-05	340-073-0050	3-1-05	Amend	2-1-05
340-071-0155	3-1-05	Amend	2-1-05	340-073-0055	3-1-05	Amend	2-1-05
340-071-0160	3-1-05	Amend	2-1-05	340-073-0056	3-1-05	Amend	2-1-05
340-071-0162	3-1-05	Amend	2-1-05	340-073-0060	3-1-05	Amend	2-1-05
340-071-0165	3-1-05	Amend	2-1-05	340-073-0065	3-1-05	Amend	2-1-05
340-071-0170	3-1-05	Amend	2-1-05	340-073-0070	3-1-05	Amend	2-1-05
340-071-0175	3-1-05	Amend	2-1-05	340-073-0075	3-1-05	Amend	2-1-05
340-071-0185	3-1-05	Amend	2-1-05	340-073-0080	3-1-05	Amend	2-1-05
340-071-0195	3-1-05	Repeal	2-1-05	340-073-0085	3-1-05	Amend	2-1-05
340-071-0200	3-1-05	Amend	2-1-05	340-090-0040	7-14-05	Amend	8-1-05
340-071-0205	3-1-05	Amend	2-1-05	340-090-0045	7-14-05	Amend	8-1-05
340-071-0210	3-1-05	Amend	2-1-05	340-090-0050	7-14-05	Amend	8-1-05
340-071-0215	3-1-05	Amend	2-1-05	340-090-0060	7-14-05	Amend	8-1-05
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340-071-0260	3-1-05	Amend	2-1-05	340-102-0065	7-14-05	Amend	8-1-05
340-071-0265	3-1-05	Amend	2-1-05	340-141-0005	7-14-05	Amend	8-1-05
340-071-0270	3-1-05	Amend	2-1-05	340-141-0010	7-14-05	Amend	8-1-05
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340-071-0285	3-1-05	Amend	2-1-05	340-142-0130	7-14-05	Amend	8-1-05
340-071-0295	3-1-05	Amend	2-1-05	340-150-0250	12-27-04	Amend	2-1-05
340-071-0300	3-1-05	Repeal	2-1-05	340-162-0150	7-14-05	Amend	8-1-05
340-071-0302	3-1-05	Amend	2-1-05	340-177-0095	7-14-05	Amend	8-1-05
340-071-0305	3-1-05	Am. & Ren.	2-1-05	340-200-0020	2-10-05	Amend	3-1-05
340-071-0310	3-1-05	Amend	2-1-05	340-200-0040	12-15-04	Amend	1-1-05
340-071-0315	3-1-05	Amend	2-1-05	340-200-0040	1-4-05	Amend	2-1-05
340-071-0320	3-1-05	Amend	2-1-05	340-200-0040	2-10-05	Amend	3-1-05
340-071-0325	3-1-05	Amend	2-1-05	340-200-0040	6-1-05	Amend	6-1-05
340-071-0330	3-1-05	Amend	2-1-05	340-200-0040	7-12-05	Amend	8-1-05
340-071-0335	3-1-05	Amend	2-1-05	340-204-0010	1-4-05	Amend	2-1-05
340-071-0340	3-1-05	Amend	2-1-05	340-204-0030	1-4-05	Amend	2-1-05
340-071-0345	3-1-05	Amend	2-1-05	340-204-0040	1-4-05	Amend	2-1-05
340-071-0360	3-1-05	Amend	2-1-05	340-204-0090	12-15-04	Amend	1-1-05
340-071-0400	3-1-05	Amend	2-1-05	340-218-0080	2-10-05	Amend	3-1-05
340-071-0401	3-1-05	Repeal	2-1-05	340-220-0030	7-11-05	Amend	8-1-05
340-071-0410	3-1-05	Amend	2-1-05	340-220-0040	7-11-05	Amend	8-1-05
340-071-0415	3-1-05	Amend	2-1-05	340-220-0050	7-11-05	Amend	8-1-05
340-071-0420	3-1-05	Amend	2-1-05	340-224-0060	1-4-05	Amend	2-1-05
340-071-0425	3-1-05	Amend	2-1-05	340-224-0070	1-4-05	Amend	2-1-05
340-071-0430	3-1-05	Amend	2-1-05	340-225-0020	1-4-05	Amend	2-1-05
340-071-0435	3-1-05	Amend	2-1-05	340-225-0045	1-4-05	Amend	2-1-05
340-071-0440	3-1-05	Amend	2-1-05	340-225-0090	1-4-05	Amend	2-1-05
340-071-0445	3-1-05	Amend	2-1-05	340-230-0030	2-10-05	Amend	3-1-05
340-071-0450	3-1-05	Repeal	2-1-05	340-230-0410	2-10-05	Amend	3-1-05

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340-238-0060	2-10-05	Amend	3-1-05	350-081-0046	7-1-05	Adopt	7-1-05
340-240-0030	1-4-05	Amend	2-1-05	350-081-0050	7-1-05	Adopt	7-1-05
340-240-0100	1-4-05	Amend	2-1-05	350-081-0052	7-1-05	Adopt	7-1-05
340-240-0110	1-4-05	Amend	2-1-05	350-081-0054	7-1-05	Adopt	7-1-05
340-240-0120	1-4-05	Amend	2-1-05	350-081-0060	7-1-05	Adopt	7-1-05
340-240-0130	1-4-05	Amend	2-1-05	350-081-0070	7-1-05	Adopt	7-1-05
340-240-0140	1-4-05	Amend	2-1-05	350-081-0072	7-1-05	Adopt	7-1-05
340-240-0150	1-4-05	Amend	2-1-05	350-081-0074	7-1-05	Adopt	7-1-05
340-240-0180	1-4-05	Amend	2-1-05	350-081-0076	7-1-05	Adopt	7-1-05
340-240-0190	1-4-05	Amend	2-1-05	350-081-0078	7-1-05	Adopt	7-1-05
340-240-0200	1-4-05	Repeal	2-1-05	350-081-0080	7-1-05	Adopt	7-1-05
340-240-0210	1-4-05	Amend	2-1-05	350-081-0082	7-1-05	Adopt	7-1-05
340-240-0220	1-4-05	Amend	2-1-05	350-081-0084	7-1-05	Adopt	7-1-05
340-240-0230	1-4-05	Amend	2-1-05	350-081-0086	7-1-05	Adopt	7-1-05
340-240-0240	1-4-05	Repeal	2-1-05	350-081-0090	7-1-05	Adopt	7-1-05
340-240-0270	1-4-05	Repeal	2-1-05	350-081-0092	7-1-05	Adopt	7-1-05
340-242-0440	12-15-04	Amend	1-1-05	350-081-0094	7-1-05	Adopt	7-1-05
340-244-0030	2-10-05	Amend	3-1-05	350-081-0096	7-1-05	Adopt	7-1-05
340-244-0040	2-10-05	Amend	3-1-05	350-081-0098	7-1-05	Adopt	7-1-05
340-244-0120	2-10-05	Amend	3-1-05	350-081-0100	7-1-05	Adopt	7-1-05
340-244-0210	2-10-05	Amend	3-1-05	350-081-0102	7-1-05	Adopt	7-1-05
340-244-0220	2-10-05	Amend	3-1-05	350-081-0104	7-1-05	Adopt	7-1-05
340-244-0230	2-10-05	Amend	3-1-05	350-081-0106	7-1-05	Adopt	7-1-05
340-256-0010	7-12-05	Amend	8-1-05	350-081-0108	7-1-05	Adopt	7-1-05
340-256-0100	7-12-05	Amend	8-1-05	350-081-0110	7-1-05	Adopt	7-1-05
340-256-0130	7-12-05	Amend	8-1-05	350-081-0112	7-1-05	Adopt	7-1-05
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340-256-0310	7-12-05	Amend	8-1-05	350-081-0124	7-1-05	Adopt	7-1-05
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340-256-0380	7-12-05	Amend	8-1-05	350-081-0180	7-1-05	Adopt	7-1-05
340-256-0390	7-12-05	Amend	8-1-05	350-081-0182	7-1-05	Adopt	7-1-05
345-026-0170	5-23-05	Amend	7-1-05	350-081-0190	7-1-05	Adopt	7-1-05
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345-026-0350	5-23-05	Amend	7-1-05	350-081-0232	7-1-05	Adopt	7-1-05
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350-081-0040	7-1-05	Adopt	7-1-05	350-081-0340	7-1-05	Adopt	7-1-05
350-081-0042	7-1-05	Adopt	7-1-05	350-081-0350	7-1-05	Adopt	7-1-05

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350-081-0365	7-1-05	Adopt	7-1-05	410-050-0471	2-1-05	Adopt	3-1-05
350-081-0370	7-1-05	Adopt	7-1-05	410-050-0481	2-1-05	Adopt	3-1-05
350-081-0380	7-1-05	Adopt	7-1-05	410-050-0491	2-1-05	Adopt	3-1-05
350-081-0390	7-1-05	Adopt	7-1-05	410-050-0501	2-1-05	Adopt	3-1-05
350-081-0400	7-1-05	Adopt	7-1-05	410-050-0511	2-1-05	Adopt	3-1-05
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350-081-0420	7-1-05	Adopt	7-1-05	410-050-0541	2-1-05	Adopt	3-1-05
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350-081-0440	7-1-05	Adopt	7-1-05	410-050-0561	2-1-05	Adopt	3-1-05
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350-081-0520	7-1-05	Adopt	7-1-05	410-050-0760	5-7-05	Adopt	5-1-05
350-081-0530	7-1-05	Adopt	7-1-05	410-050-0770	5-7-05	Adopt	5-1-05
350-081-0540	7-1-05	Adopt	7-1-05	410-050-0780	5-7-05	Adopt	5-1-05
350-081-0550	7-1-05	Adopt	7-1-05	410-050-0790	5-7-05	Adopt	5-1-05
350-081-0560	7-1-05	Adopt	7-1-05	410-050-0800	5-7-05	Adopt	5-1-05
350-081-0570	7-1-05	Adopt	7-1-05	410-050-0810	5-7-05	Adopt	5-1-05
350-081-0580	7-1-05	Adopt	7-1-05	410-050-0820	5-7-05	Adopt	5-1-05
350-081-0590	7-1-05	Adopt	7-1-05	410-050-0830	5-7-05	Adopt	5-1-05
350-081-0600	7-1-05	Adopt	7-1-05	410-050-0840	5-7-05	Adopt	5-1-05
350-081-0610	7-1-05	Adopt	7-1-05	410-050-0850	5-7-05	Adopt	5-1-05
350-081-0620	7-1-05	Adopt	7-1-05	410-050-0860	12-3-04	Amend(T)	1-1-05
350-081-0630	7-1-05	Adopt	7-1-05	410-050-0860	5-7-05	Adopt	5-1-05
410-003-0010	3-1-05	Adopt(T)	4-1-05	410-050-0860	5-10-05	Amend(T)	6-1-05
410-003-0020	3-1-05	Adopt(T)	4-1-05	410-050-0860	7-11-05	Amend	8-1-05
410-007-0210	3-29-05	Amend	5-1-05	410-050-0860(T)	7-11-05	Repeal	8-1-05
410-007-0220	3-29-05	Amend	5-1-05	410-050-0861	5-10-05	Adopt(T)	6-1-05
410-007-0230	3-29-05	Amend	5-1-05	410-050-0861	7-11-05	Adopt	8-1-05
410-007-0240	3-29-05	Amend	5-1-05	410-050-0861(T)	7-11-05	Repeal	8-1-05
410-007-0250	3-29-05	Amend	5-1-05	410-050-0870	5-7-05	Adopt	5-1-05
410-007-0260	3-29-05	Amend	5-1-05	410-120-0000	4-1-05	Amend	4-1-05
410-007-0270	3-29-05	Amend	5-1-05	410-120-1200	4-1-05	Amend	4-1-05
410-007-0280	3-29-05	Amend	5-1-05	410-120-1260	4-1-05	Amend	4-1-05
410-007-0290	3-29-05	Amend	5-1-05	410-120-1280	4-1-05	Amend	4-1-05
410-007-0300	3-29-05	Amend	5-1-05	410-120-1295	2-9-05	Amend(T)	3-1-05
410-007-0310	3-29-05	Amend	5-1-05	410-120-1295	7-1-05	Amend	8-1-05
410-007-0320	3-29-05	Amend	5-1-05	410-120-1295	7-22-05	Amend	9-1-05
410-007-0330	3-29-05	Amend	5-1-05	410-120-1295(T)	2-9-05	Suspend	3-1-05
410-007-0340	3-29-05	Amend	5-1-05	410-120-1295(T)	7-1-05	Repeal	8-1-05
410-007-0370	3-29-05	Amend	5-1-05	410-120-1320	4-1-05	Amend	4-1-05
410-007-0380	3-29-05	Amend	5-1-05	410-121-0021	4-1-05	Amend	4-1-05
410-050-0401	2-1-05	Adopt	3-1-05	410-121-0030	12-1-04	Amend	1-1-05
410-050-0411	2-1-05	Adopt	3-1-05	410-121-0030	4-1-05	Amend	5-1-05
410-050-0421	2-1-05	Adopt	3-1-05	410-121-0030	7-1-05	Amend	8-1-05
410-050-0431	2-1-05	Adopt	3-1-05	410-121-0032	1-1-05	Adopt	2-1-05
410-050-0441	2-1-05	Adopt	3-1-05	410-121-0040	12-1-04	Amend	1-1-05
410-050-0451	2-1-05	Adopt	3-1-05	410-121-0135	4-1-05	Amend	4-1-05

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410-121-0155	4-1-05	Amend	5-1-05	410-125-0141	8-15-05	Amend(T)	9-1-05
410-121-0157	1-14-05	Amend(T)	2-1-05	410-125-0195	4-1-05	Amend	5-1-05
410-121-0157	3-31-05	Amend	4-1-05	410-125-0220	4-1-05	Amend	4-1-05
410-121-0157	4-1-05	Amend(T)	4-1-05	410-125-0410	4-1-05	Amend	4-1-05
410-121-0157	6-6-05	Amend	7-1-05	410-125-1070	7-1-05	Amend	8-1-05
410-121-0157(T)	3-31-05	Repeal	4-1-05	410-129-0070	4-1-05	Amend	4-1-05
410-121-0157(T)	6-6-05	Repeal	7-1-05	410-129-0200	4-1-05	Amend	4-1-05
410-121-0160	4-1-05	Amend	5-1-05	410-129-0240	4-1-05	Amend	4-1-05
410-121-0185	4-1-05	Amend	4-1-05	410-130-0010	4-1-05	Repeal	4-1-05
410-121-0190	4-1-05	Amend	4-1-05	410-130-0020	4-1-05	Repeal	4-1-05
410-121-0300	12-10-04	Amend(T)	1-1-05	410-130-0040	4-1-05	Repeal	4-1-05
410-121-0300	2-1-05	Amend	3-1-05	410-130-0160	4-1-05	Amend	4-1-05
410-121-0300	4-1-05	Amend(T)	5-1-05	410-130-0180	4-1-05	Amend	4-1-05
410-121-0300	6-6-05	Amend	7-1-05	410-130-0200	4-1-05	Amend	4-1-05
410-121-0300(T)	6-6-05	Repeal	7-1-05	410-130-0220	4-1-05	Amend	4-1-05
410-121-0320	1-1-05	Amend	2-1-05	410-130-0240	12-1-04	Amend	1-1-05
410-122-0010	4-1-05	Amend	4-1-05	410-130-0240	4-1-05	Amend	4-1-05
410-122-0020	4-1-05	Amend	4-1-05	410-130-0368	4-1-05	Adopt	4-1-05
410-122-0040	4-1-05	Amend	4-1-05	410-130-0587	4-1-05	Amend	4-1-05
410-122-0055	4-1-05	Amend	4-1-05	410-130-0610	4-1-05	Adopt	4-1-05
410-122-0190	1-1-05	Amend	2-1-05	410-130-0680	4-1-05	Amend	4-1-05
410-122-0200	4-1-05	Amend	4-1-05	410-130-0700	4-1-05	Amend	4-1-05
410-122-0202	1-1-05	Amend	2-1-05	410-131-0120	4-1-05	Amend	4-1-05
410-122-0202	4-1-05	Amend	4-1-05	410-131-0280	4-1-05	Amend	4-1-05
410-122-0203	4-1-05	Amend	4-1-05	410-133-0000	4-5-05	Amend(T)	5-1-05
410-122-0204	1-1-05	Amend	2-1-05	410-133-0040	4-5-05	Amend(T)	5-1-05
410-122-0204	4-1-05	Amend	4-1-05	410-133-0060	4-5-05	Amend(T)	5-1-05
410-122-0207	1-1-05	Amend	2-1-05	410-133-0080	4-5-05	Amend(T)	5-1-05
410-122-0208	1-1-05	Amend	2-1-05	410-133-0090	4-5-05	Amend(T)	5-1-05
410-122-0208	4-1-05	Amend	4-1-05	410-133-0100	4-5-05	Amend(T)	5-1-05
410-122-0209	4-1-05	Amend	4-1-05	410-133-0120	4-5-05	Amend(T)	5-1-05
410-122-0210	4-1-05	Amend	4-1-05	410-133-0140	4-5-05	Amend(T)	5-1-05
410-122-0340	1-1-05	Amend	2-1-05	410-133-0160	4-5-05	Amend(T)	5-1-05
410-122-0365	1-1-05	Amend	2-1-05	410-133-0180	4-5-05	Amend(T)	5-1-05
410-122-0375	4-1-05	Amend	4-1-05	410-133-0200	4-5-05	Amend(T)	5-1-05
410-122-0400	1-1-05	Amend	2-1-05	410-133-0220	4-5-05	Amend(T)	5-1-05
410-122-0420	4-1-05	Amend	4-1-05	410-133-0245	4-5-05	Adopt(T)	5-1-05
410-122-0475	1-1-05	Amend	2-1-05	410-133-0280	4-5-05	Amend(T)	5-1-05
410-122-0560	1-1-05	Amend	2-1-05	410-133-0300	4-5-05	Amend(T)	5-1-05
410-122-0580	1-1-05	Amend	2-1-05	410-133-0320	4-5-05	Amend(T)	5-1-05
410-122-0590	4-1-05	Amend	4-1-05	410-133-0340	4-5-05	Amend(T)	5-1-05
410-122-0625	4-1-05	Amend	4-1-05	410-141-0000	5-1-05	Amend	6-1-05
410-122-0630	1-1-05	Amend	2-1-05	410-141-0060	5-1-05	Amend	6-1-05
410-122-0660	4-1-05	Amend	4-1-05	410-141-0065	4-1-05	Repeal	4-1-05
410-122-0720	1-1-05	Amend	2-1-05	410-141-0070	5-1-05	Amend	6-1-05
410-123-1040	8-1-05	Amend	9-1-05	410-141-0080	5-1-05	Amend	6-1-05
410-123-1085	4-1-05	Amend	4-1-05	410-141-0110	5-1-05	Amend	6-1-05
410-123-1240	8-1-05	Amend	9-1-05	410-141-0120	5-1-05	Amend	6-1-05
410-123-1260	4-1-05	Amend	4-1-05	410-141-0140	5-1-05	Amend	6-1-05
410-123-1670	4-1-05	Amend	4-1-05	410-141-0160	5-1-05	Amend	6-1-05
410-124-0000	12-10-04	Amend(T)	1-1-05	410-141-0180	5-1-05	Amend	6-1-05
410-124-0000	12-30-04	Amend(T)	2-1-05	410-141-0200	5-1-05	Amend	6-1-05
410-124-0000(T)	12-10-04	Suspend	1-1-05	410-141-0220	5-1-05	Amend	6-1-05
410-124-0000(T)	12-30-04	Suspend	2-1-05	410-141-0280	5-1-05	Amend	6-1-05
410-124-0105	4-1-05	Adopt	5-1-05	410-141-0300	5-1-05	Amend	6-1-05

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410-141-0340	5-1-05	Amend	6-1-05	411-045-0050	1-4-05	Amend	2-1-05
410-141-0400	5-1-05	Amend	6-1-05	411-045-0060	1-4-05	Amend	2-1-05
410-141-0405	5-1-05	Amend	6-1-05	411-045-0070	1-4-05	Amend	2-1-05
410-141-0420	5-1-05	Amend	6-1-05	411-045-0080	1-4-05	Amend	2-1-05
410-141-0440	5-1-05	Amend	6-1-05	411-045-0090	1-4-05	Amend	2-1-05
410-141-0480	5-1-05	Amend	6-1-05	411-045-0100	1-4-05	Amend	2-1-05
410-141-0520	5-1-05	Amend	6-1-05	411-045-0110	1-4-05	Amend	2-1-05
410-142-0300	12-16-04	Amend	1-1-05	411-045-0120	1-4-05	Amend	2-1-05
410-146-0080	4-1-05	Amend	4-1-05	411-045-0130	1-4-05	Amend	2-1-05
410-147-0365	3-18-05	Adopt(T)	4-1-05	411-045-0140	1-4-05	Amend	2-1-05
410-147-0365	6-1-05	Adopt	6-1-05	411-048-0000	8-1-05	Amend	9-1-05
410-148-0090	4-1-05	Amend	4-1-05	411-048-0130	8-1-05	Amend	9-1-05
411-002-0155	6-6-05	Adopt	7-1-05	411-070-0033	4-19-05	Adopt	6-1-05
411-002-0175	12-30-04	Adopt	2-1-05	411-070-0359	12-28-04	Amend	2-1-05
411-015-0015	1-4-05	Amend	2-1-05	411-070-0428	12-28-04	Amend	2-1-05
411-015-0100	1-4-05	Amend	2-1-05	411-070-0440	12-28-04	Repeal	2-1-05
411-020-0000	7-1-05	Amend	6-1-05	411-070-0442	12-28-04	Adopt	2-1-05
411-020-0002	7-1-05	Amend	6-1-05	411-070-0446	12-28-04	Repeal	2-1-05
411-020-0010	7-1-05	Amend	6-1-05	411-070-0465	12-28-04	Amend	2-1-05
411-020-0015	7-1-05	Amend	6-1-05	411-335-0010	1-1-05	Adopt	1-1-05
411-020-0020	7-1-05	Amend	6-1-05	411-335-0020	1-1-05	Adopt	1-1-05
411-020-0030	7-1-05	Amend	6-1-05	411-335-0030	1-1-05	Adopt	1-1-05
411-020-0040	7-1-05	Amend	6-1-05	411-335-0040	1-1-05	Adopt	1-1-05
411-020-0050	7-1-05	Am. & Ren.	6-1-05	411-335-0050	1-1-05	Adopt	1-1-05
411-020-0060	7-1-05	Adopt	6-1-05	411-335-0060	1-1-05	Adopt	1-1-05
411-020-0070	7-1-05	Adopt	6-1-05	411-335-0070	1-1-05	Adopt	1-1-05
411-020-0080	7-1-05	Adopt	6-1-05	411-335-0080	1-1-05	Adopt	1-1-05
411-020-0090	7-1-05	Adopt	6-1-05	411-335-0090	1-1-05	Adopt	1-1-05
411-020-0100	7-1-05	Adopt	6-1-05	411-335-0100	1-1-05	Adopt	1-1-05
411-020-0110	7-1-05	Adopt	6-1-05	411-335-0110	1-1-05	Adopt	1-1-05
411-020-0130	7-1-05	Adopt	6-1-05	411-335-0120	1-1-05	Adopt	1-1-05
411-027-0000	1-5-05	Amend	2-1-05	411-335-0130	1-1-05	Adopt	1-1-05
411-031-0020	1-1-05	Amend(T)	2-1-05	411-335-0140	1-1-05	Adopt	1-1-05
411-031-0020	7-1-05	Amend	8-1-05	411-335-0150	1-1-05	Adopt	1-1-05
411-031-0040	1-1-05	Amend(T)	2-1-05	411-335-0160	1-1-05	Adopt	1-1-05
411-031-0040	7-1-05	Amend	8-1-05	411-335-0170	1-1-05	Adopt	1-1-05
411-031-0050	1-1-05	Amend(T)	2-1-05	411-335-0180	1-1-05	Adopt	1-1-05
411-034-0000	12-1-04	Amend	1-1-05	411-335-0190	1-1-05	Adopt	1-1-05
411-034-0010	12-1-04	Amend	1-1-05	411-335-0200	1-1-05	Adopt	1-1-05
411-034-0020	12-1-04	Amend	1-1-05	411-335-0210	1-1-05	Adopt	1-1-05
411-034-0020	7-1-05	Amend	8-1-05	411-335-0220	1-1-05	Adopt	1-1-05
411-034-0030	12-1-04	Amend	1-1-05	411-335-0230	1-1-05	Adopt	1-1-05
411-034-0030	7-1-05	Amend	8-1-05	411-335-0240	1-1-05	Adopt	1-1-05
411-034-0035	12-1-04	Adopt	1-1-05	411-335-0250	1-1-05	Adopt	1-1-05
411-034-0040	12-1-04	Adopt	1-1-05	411-335-0260	1-1-05	Adopt	1-1-05
411-034-0050	12-1-04	Amend	1-1-05	411-335-0270	1-1-05	Adopt	1-1-05
411-034-0055	12-1-04	Adopt	1-1-05	411-335-0280	1-1-05	Adopt	1-1-05
411-034-0055	7-1-05	Amend	8-1-05	411-335-0290	1-1-05	Adopt	1-1-05
411-034-0070	12-1-04	Amend	1-1-05	411-335-0300	1-1-05	Adopt	1-1-05
411-034-0070	7-1-05	Amend	8-1-05	411-335-0310	1-1-05	Adopt	1-1-05
411-034-0090	12-1-04	Amend	1-1-05	411-335-0320	1-1-05	Adopt	1-1-05
411-045-0000	1-4-05	Amend	2-1-05	411-335-0330	1-1-05	Adopt	1-1-05
411-045-0010	1-4-05	Amend	2-1-05	411-335-0340	1-1-05	Adopt	1-1-05
411-045-0020	1-4-05	Amend	2-1-05	411-335-0350	1-1-05	Adopt	1-1-05
411-045-0030	1-4-05	Amend	2-1-05	411-335-0360	1-1-05	Adopt	1-1-05

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411-335-0380	1-1-05	Adopt	1-1-05	413-010-0714	2-1-05	Amend	3-1-05
411-335-0390	1-1-05	Adopt	1-1-05	413-010-0715	2-1-05	Amend	3-1-05
411-340-0010	6-23-05	Amend	8-1-05	413-010-0716	2-1-05	Amend	3-1-05
411-340-0020	1-1-05	Amend(T)	2-1-05	413-010-0717	2-1-05	Amend	3-1-05
411-340-0020	6-23-05	Amend	8-1-05	413-010-0718	2-1-05	Amend	3-1-05
411-340-0030	6-23-05	Amend	8-1-05	413-010-0720	2-1-05	Amend	3-1-05
411-340-0040	6-23-05	Amend	8-1-05	413-010-0721	2-1-05	Amend	3-1-05
411-340-0050	6-23-05	Amend	8-1-05	413-010-0722	2-1-05	Amend	3-1-05
411-340-0060	6-23-05	Amend	8-1-05	413-010-0723	2-1-05	Amend	3-1-05
411-340-0080	6-23-05	Amend	8-1-05	413-010-0732	2-1-05	Amend	3-1-05
411-340-0090	6-23-05	Amend	8-1-05	413-010-0735	2-1-05	Amend	3-1-05
411-340-0110	6-23-05	Amend	8-1-05	413-010-0738	2-1-05	Amend	3-1-05
411-340-0120	6-23-05	Amend	8-1-05	413-010-0740	2-1-05	Amend	3-1-05
411-340-0130	1-1-05	Amend(T)	2-1-05	413-010-0743	2-1-05	Amend	3-1-05
411-340-0130	6-23-05	Amend	8-1-05	413-010-0745	2-1-05	Amend	3-1-05
411-340-0140	6-23-05	Amend	8-1-05	413-010-0746	2-1-05	Amend	3-1-05
411-340-0150	6-23-05	Amend	8-1-05	413-010-0748	2-1-05	Amend	3-1-05
411-340-0160	6-23-05	Amend	8-1-05	413-010-0750	2-1-05	Amend	3-1-05
411-340-0170	6-23-05	Amend	8-1-05	413-015-0115	2-1-05	Amend	3-1-05
411-346-0165	1-1-05	Adopt	1-1-05	413-015-0205	2-1-05	Amend	3-1-05
411-360-0010	2-1-05	Adopt	2-1-05	413-015-0210	2-1-05	Amend	3-1-05
411-360-0020	2-1-05	Adopt	2-1-05	413-015-0215	2-1-05	Amend	3-1-05
411-360-0030	2-1-05	Adopt	2-1-05	413-015-0305	2-1-05	Amend	3-1-05
411-360-0040	2-1-05	Adopt	2-1-05	413-015-0505	2-1-05	Amend	3-1-05
411-360-0050	2-1-05	Adopt	2-1-05	413-015-0511	2-1-05	Amend	3-1-05
411-360-0060	2-1-05	Adopt	2-1-05	413-015-0725	2-1-05	Amend	3-1-05
411-360-0070	2-1-05	Adopt	2-1-05	413-015-1000	4-1-05	Amend	5-1-05
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411-360-0090	2-1-05	Adopt	2-1-05	413-015-1100	7-28-05	Adopt	9-1-05
411-360-0100	2-1-05	Adopt	2-1-05	413-015-1105	1-28-05	Adopt(T)	3-1-05
411-360-0110	2-1-05	Adopt	2-1-05	413-015-1105	7-28-05	Adopt	9-1-05
411-360-0120	2-1-05	Adopt	2-1-05	413-015-1110	1-28-05	Adopt(T)	3-1-05
411-360-0130	2-1-05	Adopt	2-1-05	413-015-1110	7-28-05	Adopt	9-1-05
411-360-0140	2-1-05	Adopt	2-1-05	413-015-1115	1-28-05	Adopt(T)	3-1-05
411-360-0150	2-1-05	Adopt	2-1-05	413-015-1115	7-28-05	Adopt	9-1-05
411-360-0160	2-1-05	Adopt	2-1-05	413-015-1120	1-28-05	Adopt(T)	3-1-05
411-360-0170	2-1-05	Adopt	2-1-05	413-015-1120	7-28-05	Adopt	9-1-05
411-360-0180	2-1-05	Adopt	2-1-05	413-015-1125	1-28-05	Adopt(T)	3-1-05
411-360-0190	2-1-05	Adopt	2-1-05	413-015-1125	7-28-05	Adopt	9-1-05
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411-360-0230	2-1-05	Adopt	2-1-05	413-030-0155	6-1-05	Repeal	7-1-05
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411-360-0270	2-1-05	Adopt	2-1-05	413-050-0510	1-1-05	Amend	2-1-05
411-360-0275	2-1-05	Adopt	2-1-05	413-050-0515	1-1-05	Amend	2-1-05
411-360-0280	2-1-05	Adopt	2-1-05	413-050-0525	1-1-05	Repeal	2-1-05
411-360-0290	2-1-05	Adopt	2-1-05	413-050-0530	1-1-05	Amend	2-1-05
411-360-0300	2-1-05	Adopt	2-1-05	413-050-0535	1-1-05	Amend	2-1-05
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413-050-0570	1-1-05	Amend	2-1-05	416-340-0080	3-25-05	Repeal	5-1-05
413-050-0575	1-1-05	Amend	2-1-05	416-340-0090	3-25-05	Repeal	5-1-05
413-050-0580	1-1-05	Repeal	2-1-05	416-340-0100	3-25-05	Repeal	5-1-05
413-050-0585	1-1-05	Amend	2-1-05	416-340-0110	3-25-05	Repeal	5-1-05
413-055-0100	1-1-05	Amend	2-1-05	416-350-0000	6-13-05	Repeal	7-1-05
413-055-0105	1-1-05	Amend	2-1-05	416-350-0010	6-13-05	Repeal	7-1-05
413-055-0105	8-1-05	Amend	9-1-05	416-350-0020	6-13-05	Repeal	7-1-05
413-055-0110	1-1-05	Amend	2-1-05	416-350-0030	6-13-05	Repeal	7-1-05
413-055-0115	1-1-05	Repeal	2-1-05	416-380-0000	8-12-05	Repeal	9-1-05
413-055-0120	1-1-05	Amend	2-1-05	416-380-0010	8-12-05	Repeal	9-1-05
413-055-0125	1-1-05	Repeal	2-1-05	416-380-0020	8-12-05	Repeal	9-1-05
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413-055-0140	1-1-05	Amend	2-1-05	416-380-0050	8-12-05	Repeal	9-1-05
413-055-0145	1-1-05	Amend	2-1-05	416-380-0060	8-12-05	Repeal	9-1-05
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413-055-0165	1-1-05	Amend	2-1-05	416-425-0010	7-14-05	Adopt(T)	8-1-05
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436-009-0008	4-1-05	Amend	5-1-05	436-105-0500	7-1-05	Amend	7-1-05
436-009-0010	4-1-05	Amend	5-1-05	436-105-0510	7-1-05	Amend	7-1-05
436-009-0015	4-1-05	Amend	5-1-05	436-105-0520	7-1-05	Amend	7-1-05
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436-009-0070	4-1-05	Amend	5-1-05	436-110-0290	7-1-05	Adopt	7-1-05
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436-010-0008	4-1-05	Amend	5-1-05	436-110-0326	7-1-05	Adopt	7-1-05
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436-010-0230	4-1-05	Amend	5-1-05	436-110-0336	7-1-05	Adopt	7-1-05
436-010-0240	4-1-05	Amend	5-1-05	436-110-0337	7-1-05	Adopt	7-1-05
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436-010-0265	4-1-05	Amend	5-1-05	436-110-0347	7-1-05	Adopt	7-1-05
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436-010-0275	4-1-05	Amend	5-1-05	436-110-0351	7-1-05	Adopt	7-1-05
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436-010-0300	4-1-05	Amend	5-1-05	436-110-0900	7-1-05	Amend	7-1-05
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436-010-0340	4-1-05	Amend	5-1-05	436-120-0005	7-1-05	Amend	7-1-05
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437-007-0650	6-1-05	Amend	7-1-05	442-006-0020	3-1-05	Adopt	4-1-05
437-007-0660	6-1-05	Amend	7-1-05	442-006-0030	3-1-05	Adopt	4-1-05
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437-007-0935	6-1-05	Amend	7-1-05	443-002-0010	1-1-05	Adopt	2-1-05
437-007-1115	6-1-05	Amend	7-1-05	443-002-0020	1-1-05	Adopt	2-1-05
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442-002-0015	3-1-05	Repeal	4-1-05	459-005-0370	1-31-05	Amend	3-1-05
442-002-0020	3-1-05	Repeal	4-1-05	459-005-0506	12-15-04	Amend(T)	1-1-05
442-002-0025	3-1-05	Repeal	4-1-05	459-005-0506	2-22-05	Amend	4-1-05
442-002-0030	3-1-05	Repeal	4-1-05	459-005-0506(T)	2-22-05	Repeal	4-1-05
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442-002-0055	3-1-05	Repeal	4-1-05	459-005-0535	2-22-05	Amend	4-1-05
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442-004-0050	7-7-05	Amend(T)	8-1-05	459-005-0545	2-22-05	Amend	4-1-05
442-004-0070	7-7-05	Amend(T)	8-1-05	459-005-0545(T)	2-22-05	Repeal	4-1-05
442-004-0080	7-7-05	Amend(T)	8-1-05	459-005-0560	12-15-04	Amend(T)	1-1-05
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459-005-0590(T)	2-22-05	Repeal	4-1-05	461-130-0330	7-1-05	Amend	8-1-05
459-005-0591	12-15-04	Amend(T)	1-1-05	461-135-0095	4-1-05	Amend	5-1-05
459-005-0591	1-31-05	Amend	3-1-05	461-135-0400	1-1-05	Amend	2-1-05
459-005-0591	2-22-05	Amend	4-1-05	461-135-0400	4-1-05	Amend	5-1-05
459-005-0591(T)	2-22-05	Repeal	4-1-05	461-135-0400	7-1-05	Amend	8-1-05
459-005-0595	12-15-04	Amend(T)	1-1-05	461-135-0405	1-1-05	Amend	2-1-05
459-005-0595	2-22-05	Amend	4-1-05	461-135-0505	4-1-05	Amend	5-1-05
459-005-0595(T)	2-22-05	Repeal	4-1-05	461-135-0506	4-1-05	Amend	5-1-05
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459-007-0230	3-15-05	Amend	1-1-05	461-135-0570	4-1-05	Amend	5-1-05
459-007-0240	3-15-05	Amend	1-1-05	461-135-0570	7-1-05	Amend	8-1-05
459-007-0250	3-15-05	Amend	1-1-05	461-135-0710	4-1-05	Amend	5-1-05
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581-021-0037	3-23-05	Amend	5-1-05	585-010-0215	2-11-05	Amend	3-1-05
581-021-0041	2-14-05	Amend	3-1-05	585-010-0220	2-11-05	Amend	3-1-05
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585-020-0010	2-11-05	Amend	3-1-05	603-054-0065	2-15-05	Amend	3-1-05
585-020-0020	2-11-05	Amend	3-1-05	603-054-0070	2-15-05	Amend	3-1-05
585-020-0035	2-11-05	Amend	3-1-05	603-054-0075	2-15-05	Amend	3-1-05
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589-020-0225	11-30-04	Adopt	1-1-05	607-010-0020	8-1-05	Amend	8-1-05
603-001-0125	6-30-05	Amend	8-1-05	611-010-0020	1-13-05	Amend	2-1-05
603-001-0130	6-30-05	Amend	8-1-05	629-001-0010	8-2-05	Amend(T)	9-1-05
603-001-0135	6-30-05	Amend	8-1-05	629-001-0025	8-2-05	Amend(T)	9-1-05
603-001-0140	6-30-05	Amend	8-1-05	629-001-0056	7-1-05	Adopt(T)	8-1-05
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603-001-0150	6-30-05	Amend	8-1-05	629-025-0070	3-1-05	Amend	4-1-05
603-001-0155	6-30-05	Amend	8-1-05	629-025-0080	3-1-05	Adopt	4-1-05
603-001-0160	6-30-05	Adopt	8-1-05	629-041-0200	1-7-05	Amend	2-1-05
603-001-0170	6-30-05	Adopt	8-1-05	629-041-0515	1-7-05	Amend	2-1-05
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603-011-0620	2-17-05	Amend	4-1-05	629-605-0100	8-2-05	Amend(T)	9-1-05
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603-041-0075	11-30-04	Repeal	1-1-05	629-615-0300	8-2-05	Amend(T)	9-1-05
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635-023-0128(T)	7-1-05	Suspend	8-1-05	635-042-0023	6-23-05	Adopt(T)	8-1-05
635-023-0130	1-1-05	Amend	1-1-05	635-042-0023	7-11-05	Amend(T)	8-1-05
635-023-0130	4-15-05	Amend	5-1-05	635-042-0023	7-18-05	Amend(T)	8-1-05
635-023-0130	8-1-05	Amend(T)	9-1-05	635-042-0023	7-25-05	Amend(T)	9-1-05
635-023-0134	1-1-05	Adopt	1-1-05	635-042-0023(T)	7-11-05	Suspend	8-1-05
635-023-0134	5-21-05	Amend(T)	7-1-05	635-042-0023(T)	7-18-05	Suspend	8-1-05
635-039-0080	1-1-05	Amend	1-1-05	635-042-0023(T)	7-25-05	Suspend	9-1-05
635-039-0080	1-1-05	Amend	1-1-05	635-042-0031	8-3-05	Amend(T)	9-1-05
635-039-0080	5-1-05	Amend(T)	6-1-05	635-042-0031	8-14-05	Amend(T)	9-1-05
635-039-0080	6-12-05	Amend(T)	7-1-05	635-042-0031(T)	8-14-05	Suspend	9-1-05
635-039-0080	7-1-05	Amend	8-1-05	635-042-0110	2-14-05	Amend	3-1-05
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635-042-0110	6-29-05	Amend(T)	8-1-05	635-043-0085	1-1-05	Amend	2-1-05
635-042-0110(T)	5-23-05	Suspend	7-1-05	635-043-0096	3-9-05	Amend	4-1-05
635-042-0110(T)	6-29-05	Suspend	8-1-05	635-044-0130	1-1-05	Amend	2-1-05
635-042-0115	2-14-05	Amend	3-1-05	635-060-0000	1-1-05	Amend	2-1-05
635-042-0130	1-1-05	Amend(T)	2-1-05	635-060-0005	1-1-05	Amend	2-1-05
635-042-0130	2-24-05	Amend(T)	4-1-05	635-060-0023	1-1-05	Amend	2-1-05
635-042-0130(T)	2-24-05	Suspend	4-1-05	635-060-0046	1-1-05	Amend	2-1-05
635-042-0135	1-1-05	Amend(T)	2-1-05	635-060-0046	4-20-05	Amend	6-1-05
635-042-0135	2-22-05	Amend(T)	4-1-05	635-060-0055	4-1-05	Amend	2-1-05
635-042-0135(T)	2-22-05	Suspend	4-1-05	635-065-0001	1-1-05	Amend	2-1-05
635-042-0145	2-14-05	Amend	3-1-05	635-065-0006	1-1-05	Amend	2-1-05
635-042-0145	3-10-05	Amend(T)	4-1-05	635-065-0015	1-1-05	Amend	2-1-05
635-042-0145	3-15-05	Amend(T)	4-1-05	635-065-0090	1-1-05	Amend	2-1-05
635-042-0145	4-20-05	Amend(T)	6-1-05	635-065-0090	6-14-05	Amend	7-1-05
635-042-0145	4-28-05	Amend(T)	6-1-05	635-065-0401	1-1-05	Amend	2-1-05
635-042-0145	5-5-05	Amend(T)	6-1-05	635-065-0625	1-1-05	Amend	2-1-05
635-042-0145	5-10-05	Amend(T)	6-1-05	635-065-0635	1-1-05	Amend	2-1-05
635-042-0145	5-18-05	Amend(T)	7-1-05	635-065-0720	1-1-05	Amend	2-1-05
635-042-0145	7-11-05	Amend(T)	8-1-05	635-065-0735	1-1-05	Amend	2-1-05
635-042-0145	7-18-05	Amend(T)	8-1-05	635-065-0740	1-1-05	Amend	2-1-05
635-042-0145	8-3-05	Amend(T)	9-1-05	635-065-0745	1-1-05	Amend	2-1-05
635-042-0145(T)	3-15-05	Suspend	4-1-05	635-065-0760	6-1-05	Amend	2-1-05
635-042-0145(T)	4-28-05	Suspend	6-1-05	635-065-0765	6-14-05	Amend	7-1-05
635-042-0145(T)	5-5-05	Suspend	6-1-05	635-066-0000	1-1-05	Amend	2-1-05
635-042-0145(T)	5-10-05	Suspend	6-1-05	635-067-0000	1-1-05	Amend	2-1-05
635-042-0145(T)	5-18-05	Suspend	7-1-05	635-067-0000	6-14-05	Amend	7-1-05
635-042-0145(T)	7-11-05	Suspend	8-1-05	635-067-0004	6-14-05	Amend	7-1-05
635-042-0145(T)	7-18-05	Suspend	8-1-05	635-067-0015	1-1-05	Amend	2-1-05
635-042-0145(T)	8-3-05	Suspend	9-1-05	635-067-0028	1-1-05	Amend	2-1-05
635-042-0160	2-14-05	Amend	3-1-05	635-067-0029	1-1-05	Amend	2-1-05
635-042-0160	3-10-05	Amend(T)	4-1-05	635-067-0034	1-1-05	Amend	2-1-05
635-042-0160	3-15-05	Amend(T)	4-1-05	635-067-0041	1-1-05	Amend	2-1-05
635-042-0160	4-20-05	Amend(T)	6-1-05	635-068-0000	3-1-05	Amend	2-1-05
635-042-0160	4-28-05	Amend(T)	6-1-05	635-068-0000	6-14-05	Amend	7-1-05
635-042-0160	5-5-05	Amend(T)	6-1-05	635-068-0022	3-1-05	Amend	2-1-05
635-042-0160	5-10-05	Amend(T)	6-1-05	635-069-0000	2-1-05	Amend	2-1-05
635-042-0160	8-3-05	Amend(T)	9-1-05	635-069-0000	6-14-05	Amend	7-1-05
635-042-0160(T)	3-15-05	Suspend	4-1-05	635-069-0030	2-1-05	Amend	2-1-05
635-042-0160(T)	4-28-05	Suspend	6-1-05	635-070-0000	4-1-05	Amend	2-1-05
635-042-0160(T)	5-5-05	Suspend	6-1-05	635-070-0000	6-14-05	Amend	7-1-05
635-042-0160(T)	5-10-05	Suspend	6-1-05	635-071-0000	4-1-05	Amend	2-1-05
635-042-0160(T)	8-3-05	Suspend	9-1-05	635-071-0000	6-14-05	Amend	7-1-05
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635-042-0170	8-3-05	Amend(T)	9-1-05	635-073-0000	2-1-05	Amend	2-1-05
635-042-0180	2-14-05	Amend	3-1-05	635-073-0000	6-14-05	Amend	7-1-05
635-042-0180	4-20-05	Amend(T)	6-1-05	635-073-0001	6-14-05	Amend	7-1-05
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635-078-0011	6-14-05	Amend	7-1-05	690-021-0110	11-16-04	Am. & Ren.	1-1-05
635-080-0065	1-1-05	Amend	2-1-05	690-021-0120	11-16-04	Repeal	1-1-05
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635-110-0030	3-9-05	Adopt	4-1-05	690-021-0200	11-16-04	Am. & Ren.	1-1-05
635-110-0040	3-9-05	Adopt	4-1-05	690-021-0250	11-16-04	Am. & Ren.	1-1-05
635-412-0030	11-17-04	Amend	1-1-05	690-021-0300	11-16-04	Am. & Ren.	1-1-05
635-430-0000	11-26-04	Amend	1-1-05	690-021-0350	11-16-04	Am. & Ren.	1-1-05
635-430-0010	11-26-04	Amend	1-1-05	690-021-0400	11-16-04	Repeal	1-1-05
635-430-0020	11-26-04	Amend	1-1-05	690-021-0500	11-16-04	Repeal	1-1-05
635-430-0025	11-26-04	Adopt	1-1-05	690-021-0600	11-16-04	Am. & Ren.	1-1-05
635-430-0030	11-26-04	Amend	1-1-05	690-021-0700	11-16-04	Am. & Ren.	1-1-05
635-430-0040	11-26-04	Amend	1-1-05	690-385-2000	11-16-04	Adopt	1-1-05
635-430-0050	11-26-04	Amend	1-1-05	690-385-2200	11-16-04	Adopt	1-1-05
635-430-0060	11-26-04	Amend	1-1-05	690-385-3110	11-16-04	Adopt	1-1-05
635-430-0070	11-26-04	Amend	1-1-05	690-385-3120	11-16-04	Adopt	1-1-05
635-430-0080	11-26-04	Amend	1-1-05	690-385-3130	11-16-04	Adopt	1-1-05
635-430-0090	11-26-04	Amend	1-1-05	690-385-3140	11-16-04	Adopt	1-1-05
635-430-0100	11-26-04	Amend	1-1-05	690-385-3150	11-16-04	Adopt	1-1-05
635-430-0310	11-26-04	Amend	1-1-05	690-385-3500	11-16-04	Adopt	1-1-05
635-430-0320	11-26-04	Amend	1-1-05	690-385-3520	11-16-04	Adopt	1-1-05
635-430-0330	11-26-04	Amend	1-1-05	690-385-3600	11-16-04	Adopt	1-1-05
635-430-0350	11-26-04	Amend	1-1-05	690-385-4000	11-16-04	Adopt	1-1-05
635-430-0360	11-26-04	Amend	1-1-05	690-385-4100	11-16-04	Adopt	1-1-05
635-430-0375	11-26-04	Adopt	1-1-05	690-385-4200	11-16-04	Adopt	1-1-05
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647-010-0010	6-1-05	Amend	6-1-05	690-385-4400	11-16-04	Adopt	1-1-05
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660-002-0010	3-18-05	Amend(T)	5-1-05	690-385-4600	11-16-04	Adopt	1-1-05
660-002-0010	8-12-05	Amend	9-1-05	690-385-4700	11-16-04	Adopt	1-1-05
660-002-0015	3-18-05	Amend(T)	5-1-05	690-385-5600	11-16-04	Adopt	1-1-05
660-002-0015	8-12-05	Amend	9-1-05	690-385-5680	11-16-04	Adopt	1-1-05
660-002-0020	3-18-05	Amend(T)	5-1-05	690-385-5700	11-16-04	Adopt	1-1-05
660-002-0020	8-12-05	Amend	9-1-05	690-385-5800	11-16-04	Adopt	1-1-05
660-004-0010	6-28-05	Amend	8-1-05	690-385-6000	11-16-04	Adopt	1-1-05
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660-015-0000	2-14-05	Amend	3-1-05	695-035-0015	6-8-05	Adopt	7-1-05
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731-007-0030	3-1-05	Repeal	4-1-05	731-070-0055(T)	1-20-05	Repeal	3-1-05
731-007-0040	3-1-05	Repeal	4-1-05	731-080-0010	3-18-05	Adopt	5-1-05
731-007-0050	3-1-05	Repeal	4-1-05	731-080-0020	3-18-05	Adopt	5-1-05
731-007-0060	3-1-05	Repeal	4-1-05	731-080-0030	3-18-05	Adopt	5-1-05
731-007-0070	3-1-05	Repeal	4-1-05	731-080-0040	3-18-05	Adopt	5-1-05
731-007-0080	3-1-05	Repeal	4-1-05	731-080-0050	3-18-05	Adopt	5-1-05
731-007-0090	3-1-05	Repeal	4-1-05	731-080-0060	3-18-05	Adopt	5-1-05
731-007-0100	3-1-05	Repeal	4-1-05	731-080-0070	3-18-05	Adopt	5-1-05
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731-007-0140	3-1-05	Repeal	4-1-05	731-146-0025	3-1-05	Adopt(T)	4-1-05
731-007-0150	3-1-05	Repeal	4-1-05	731-146-0030	3-1-05	Adopt(T)	4-1-05
731-007-0160	3-1-05	Repeal	4-1-05	731-146-0040	3-1-05	Adopt(T)	4-1-05
731-007-0170	3-1-05	Repeal	4-1-05	731-146-0050	3-1-05	Adopt(T)	4-1-05
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731-007-0260	3-1-05	Adopt	4-1-05	731-146-0140	3-1-05	Adopt(T)	4-1-05
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731-030-0050	11-17-04	Amend	1-1-05	732-005-0031	1-1-05	Amend	2-1-05
731-030-0060	11-17-04	Repeal	1-1-05	732-005-0031(T)	1-1-05	Repeal	2-1-05
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731-030-0090	11-17-04	Amend	1-1-05	732-005-0046	1-1-05	Amend	2-1-05
731-030-0100	11-17-04	Amend	1-1-05	732-005-0051	1-1-05	Amend	2-1-05
731-030-0110	11-17-04	Amend	1-1-05	732-005-0051(T)	1-1-05	Repeal	2-1-05
731-030-0120	11-17-04	Amend	1-1-05	732-005-0056	1-1-05	Amend	2-1-05
731-030-0130	11-17-04	Amend	1-1-05	732-005-0061	1-1-05	Adopt	2-1-05
731-030-0140	11-17-04	Repeal	1-1-05	732-005-0066	1-1-05	Adopt	2-1-05
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732-010-0005	1-1-05	Amend	2-1-05	734-010-0370	3-1-05	Adopt	4-1-05
732-010-0010	1-1-05	Amend	2-1-05	734-010-0380	3-1-05	Adopt	4-1-05
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732-010-0015	1-1-05	Amend	2-1-05	734-020-0220	6-16-05	Amend	8-1-05
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732-010-0025	1-1-05	Amend	2-1-05	734-020-0460	7-22-05	Amend	9-1-05
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732-010-0035	1-1-05	Amend	2-1-05	734-071-0005	1-1-05	Amend	2-1-05
732-010-0035(T)	1-1-05	Repeal	2-1-05	734-071-0010	1-1-05	Amend	2-1-05
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736-015-0150	5-5-05	Am. & Ren.	6-1-05	804-001-0002	5-18-05	Amend	7-1-05
736-015-0155	5-5-05	Repeal	6-1-05	804-001-0014	2-14-05	Amend	3-1-05
736-015-0160	5-5-05	Am. & Ren.	6-1-05	804-001-0015	2-14-05	Amend	3-1-05
736-018-0045	2-4-05	Amend	3-1-05	804-003-0000	2-14-05	Amend	3-1-05
736-018-0045	5-4-05	Amend	6-1-05	804-010-0000	2-14-05	Amend	3-1-05

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804-020-0055	2-14-05	Amend	3-1-05	808-008-0280	12-15-04	Amend(T)	1-1-05
804-025-0000	2-14-05	Adopt	3-1-05	808-008-0280	2-15-05	Amend	3-1-05
804-025-0010	2-14-05	Adopt	3-1-05	808-008-0280(T)	2-15-05	Repeal	3-1-05
804-025-0020	2-14-05	Adopt	3-1-05	808-008-0291	12-15-04	Adopt(T)	1-1-05
804-030-0011	2-14-05	Amend	3-1-05	808-008-0291	2-15-05	Adopt	3-1-05
804-030-0015	2-14-05	Amend	3-1-05	808-008-0291(T)	2-15-05	Repeal	3-1-05
804-030-0020	2-14-05	Amend	3-1-05	808-008-0400	12-15-04	Amend(T)	1-1-05
804-030-0060	2-14-05	Repeal	3-1-05	808-008-0400	2-15-05	Amend	3-1-05
804-040-0000	2-14-05	Amend	3-1-05	808-008-0400(T)	2-15-05	Repeal	3-1-05
804-040-0000	5-18-05	Amend	7-1-05	808-008-0420	12-15-04	Amend(T)	1-1-05
806-001-0003	7-1-05	Amend	4-1-05	808-008-0420	2-15-05	Amend	3-1-05
806-010-0020	5-12-05	Amend	6-1-05	808-008-0420(T)	2-15-05	Repeal	3-1-05
806-010-0050	5-12-05	Amend	6-1-05	808-008-0425	12-15-04	Amend(T)	1-1-05
808-001-0005	2-15-05	Amend	3-1-05	808-008-0425	2-15-05	Amend	3-1-05
808-001-0008	6-1-05	Amend	7-1-05	808-008-0425(T)	2-15-05	Repeal	3-1-05
808-001-0030	2-15-05	Amend	3-1-05	808-008-0430	12-15-04	Amend(T)	1-1-05
808-002-0260	2-15-05	Amend	3-1-05	808-008-0430	2-15-05	Amend	3-1-05
808-002-0325	2-15-05	Adopt	3-1-05	808-008-0430(T)	2-15-05	Repeal	3-1-05
808-002-0540	12-15-04	Amend(T)	1-1-05	808-008-0440	12-15-04	Amend(T)	1-1-05
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	809-010-0025	8-15-05	Amend	9-1-05
808-008-0020	2-15-05	Amend	3-1-05	811-015-0010	2-1-05	Amend	3-1-05
808-008-0020(T)	2-15-05	Repeal	3-1-05	811-030-0030	12-10-04	Amend	1-1-05
808-008-0030	12-15-04	Amend(T)	1-1-05	812-001-0015	12-10-04	Amend	1-1-05
808-008-0030	2-15-05	Amend	3-1-05	812-001-0040	12-10-04	Amend	1-1-05
808-008-0030(T)	2-15-05	Repeal	3-1-05	812-002-0220	7-1-05	Amend	8-1-05
808-008-0050	1-1-04	Adopt(T)	3-1-05	812-002-0260	12-10-04	Amend	1-1-05
808-008-0051	12-15-04	Adopt(T)	1-1-05	812-002-0555	12-10-04	Amend	1-1-05
808-008-0051	2-15-05	Adopt	3-1-05	812-002-0760	7-1-05	Amend	8-1-05
808-008-0051(T)	2-15-05	Repeal	3-1-05	812-002-0800	12-10-04	Amend	1-1-05
808-008-0060	12-15-04	Amend(T)	1-1-05	812-003-0000	12-10-04	Repeal	1-1-05
808-008-0060	2-15-05	Amend	3-1-05	812-003-0002	12-10-04	Am. & Ren.	1-1-05
808-008-0060(T)	2-15-05	Repeal	3-1-05	812-003-0005	12-10-04	Am. & Ren.	1-1-05
808-008-0085	12-15-04	Amend(T)	1-1-05	812-003-0012	12-10-04	Repeal	1-1-05
808-008-0085	2-15-05	Amend	3-1-05	812-003-0015	12-10-04	Repeal	1-1-05
808-008-0085(T)	2-15-05	Repeal	3-1-05	812-003-0020	12-10-04	Repeal	1-1-05
808-008-0140	12-15-04	Amend(T)	1-1-05	812-003-0025	12-10-04	Repeal	1-1-05
808-008-0140	2-15-05	Amend	3-1-05	812-003-0030	12-10-04	Am. & Ren.	1-1-05
808-008-0140(T)	2-15-05	Repeal	3-1-05	812-003-0040	12-10-04	Am. & Ren.	1-1-05
808-008-0180	2-15-05	Amend	3-1-05	812-003-0050	12-10-04	Repeal	1-1-05
808-008-0240	12-15-04	Suspend	1-1-05	812-003-0100	12-10-04	Adopt	1-1-05

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812-003-0120	12-10-04	Adopt	1-1-05	812-010-0300	12-10-04	Amend	1-1-05
812-003-0130	12-10-04	Adopt	1-1-05	812-010-0320	12-10-04	Amend	1-1-05
812-003-0140	12-10-04	Adopt	1-1-05	812-010-0340	12-10-04	Amend	1-1-05
812-003-0150	12-10-04	Adopt	1-1-05	812-010-0360	12-10-04	Amend	1-1-05
812-003-0160	12-10-04	Adopt	1-1-05	812-010-0380	12-10-04	Amend	1-1-05
812-003-0170	12-10-04	Adopt	1-1-05	812-010-0420	12-10-04	Amend	1-1-05
812-003-0170	7-1-05	Amend	8-1-05	812-010-0420	7-1-05	Amend	8-1-05
812-003-0180	12-10-04	Adopt	1-1-05	812-010-0425	7-1-05	Amend	8-1-05
812-003-0190	12-10-04	Adopt	1-1-05	812-010-0460	7-1-05	Amend	8-1-05
812-003-0200	12-10-04	Adopt	1-1-05	812-010-0470	7-1-05	Am. & Ren.	8-1-05
812-003-0210	12-10-04	Adopt	1-1-05	812-010-0480	12-10-04	Amend	1-1-05
812-003-0220	12-10-04	Adopt	1-1-05	813-001-0000	8-4-05	Suspend	9-1-05
812-003-0230	12-10-04	Adopt	1-1-05	813-001-0002	8-4-05	Adopt(T)	9-1-05
812-003-0240	12-10-04	Adopt	1-1-05	813-001-0003	8-4-05	Am. & Ren.(T)	9-1-05
812-003-0260	12-10-04	Adopt	1-1-05	813-001-0005	8-4-05	Suspend	9-1-05
812-003-0270	12-10-04	Adopt	1-1-05	813-001-0007	8-4-05	Adopt(T)	9-1-05
812-003-0280	12-10-04	Adopt	1-1-05	813-001-0008	8-4-05	Suspend	9-1-05
812-003-0290	12-10-04	Adopt	1-1-05	813-001-0011	8-4-05	Adopt(T)	9-1-05
812-003-0300	12-10-04	Adopt	1-1-05	813-001-0066	8-4-05	Suspend	9-1-05
812-003-0310	12-10-04	Adopt	1-1-05	813-001-0068	8-4-05	Suspend	9-1-05
812-003-0330	12-10-04	Adopt	1-1-05	813-001-0069	8-4-05	Suspend	9-1-05
812-003-0340	12-10-04	Adopt	1-1-05	813-001-0080	8-4-05	Suspend	9-1-05
812-003-0350	12-10-04	Adopt	1-1-05	813-001-0090	8-4-05	Suspend	9-1-05
812-003-0350	7-1-05	Amend	8-1-05	813-003-0001	11-23-04	Adopt	1-1-05
812-003-0360	12-10-04	Adopt	1-1-05	813-003-0006	11-23-04	Adopt	1-1-05
812-003-0370	12-10-04	Adopt	1-1-05	813-003-0011	11-23-04	Adopt	1-1-05
812-003-0380	12-10-04	Adopt	1-1-05	813-003-0015	11-23-04	Adopt	1-1-05
812-003-0380	7-1-05	Amend	8-1-05	813-003-0021	11-23-04	Adopt	1-1-05
812-003-0410	12-10-04	Adopt	1-1-05	813-003-0025	11-23-04	Adopt	1-1-05
812-003-0420	12-10-04	Adopt	1-1-05	813-003-0031	11-23-04	Adopt	1-1-05
812-003-0430	12-10-04	Adopt	1-1-05	813-003-0035	11-23-04	Adopt	1-1-05
812-004-0001	12-10-04	Amend	1-1-05	813-005-0001	8-4-05	Adopt(T)	9-1-05
812-004-0240	12-10-04	Amend	1-1-05	813-005-0005	8-4-05	Amend(T)	9-1-05
812-004-0260	12-10-04	Amend	1-1-05	813-005-0010	8-4-05	Suspend	9-1-05
812-004-0320	12-10-04	Amend	1-1-05	813-005-0015	8-4-05	Suspend	9-1-05
812-004-0470	12-10-04	Amend	1-1-05	813-005-0016	8-4-05	Adopt(T)	9-1-05
812-004-0530	12-10-04	Amend	1-1-05	813-005-0020	8-4-05	Suspend	9-1-05
812-004-0540	12-10-04	Amend	1-1-05	813-005-0025	8-4-05	Suspend	9-1-05
812-004-0560	12-10-04	Amend	1-1-05	813-005-0030	8-4-05	Suspend	9-1-05
812-004-0590	12-10-04	Amend	1-1-05	813-230-0000	12-17-04	Am. & Ren.(T)	2-1-05
812-004-0600	12-10-04	Amend	1-1-05	813-230-0001	12-17-04	Adopt(T)	2-1-05
812-004-0600	7-1-05	Amend	8-1-05	813-230-0005	12-17-04	Am. & Ren.(T)	2-1-05
812-005-0005	12-10-04	Amend	1-1-05	813-230-0010	12-17-04	Amend(T)	2-1-05
812-006-0020	12-10-04	Amend	1-1-05	813-230-0015	12-17-04	Amend(T)	2-1-05
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812-006-0030	7-1-05	Amend	8-1-05	817-005-0005	7-1-05	Amend	8-1-05
812-008-0020	12-10-04	Amend	1-1-05	817-030-0018	7-1-05	Amend	8-1-05
812-008-0070	12-10-04	Amend	1-1-05	817-035-0010	7-1-05	Amend	8-1-05
812-008-0110	12-10-04	Amend	1-1-05	817-035-0030	7-1-05	Amend	8-1-05
812-009-0400	12-10-04	Amend	1-1-05	817-040-0003	7-1-05	Amend	8-1-05
812-010-0040	12-10-04	Amend	1-1-05	818-001-0002	2-1-05	Amend	3-1-05
812-010-0050	12-10-04	Amend	1-1-05	818-001-0005	2-1-05	Amend	3-1-05
812-010-0080	7-1-05	Amend	8-1-05	818-001-0087	2-1-05	Amend	3-1-05
812-010-0200	12-10-04	Amend	1-1-05	818-021-0011	12-1-04	Amend	1-1-05
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818-026-0010	2-1-05	Amend	3-1-05	836-051-0020	8-1-05	Amend	7-1-05
818-026-0020	2-1-05	Amend	3-1-05	836-051-0540	8-1-05	Amend	7-1-05
818-026-0030	2-1-05	Amend	3-1-05	836-051-0550	8-1-05	Amend	7-1-05
818-026-0030	2-1-05	Amend	3-1-05	836-051-0570	8-1-05	Amend	7-1-05
818-026-0035	2-1-05	Amend	3-1-05	836-051-0590	8-1-05	Amend	7-1-05
818-026-0040	2-1-05	Amend	3-1-05	836-052-0114	7-26-05	Amend	9-1-05
818-026-0050	2-1-05	Amend	3-1-05	836-052-0119	7-26-05	Amend	9-1-05
818-026-0050	2-1-05	Amend	3-1-05	836-052-0124	7-26-05	Amend	9-1-05
818-026-0055	2-1-05	Adopt	3-1-05	836-052-0129	7-26-05	Amend	9-1-05
818-026-0060	2-1-05	Amend	3-1-05	836-052-0133	7-26-05	Amend	9-1-05
818-026-0060	2-1-05	Amend	3-1-05	836-052-0134	7-26-05	Amend	9-1-05
818-026-0070	2-1-05	Amend	3-1-05	836-052-0136	7-26-05	Amend	9-1-05
818-026-0080	2-1-05	Amend	3-1-05	836-052-0138	7-26-05	Amend	9-1-05
818-026-0100	2-1-05	Amend	3-1-05	836-052-0139	7-26-05	Amend	9-1-05
818-026-0110	2-1-05	Amend	3-1-05	836-052-0142	7-26-05	Amend	9-1-05
818-026-0120	2-1-05	Amend	3-1-05	836-052-0145	7-26-05	Amend	9-1-05
818-026-0130	2-1-05	Amend	3-1-05	836-052-0151	7-26-05	Amend	9-1-05
818-035-0025	2-1-05	Amend	3-1-05	836-052-0156	8-1-05	Amend	7-1-05
818-035-0030	2-1-05	Amend	3-1-05	836-052-0160	7-26-05	Amend	9-1-05
818-042-0050	12-1-04	Amend	1-1-05	836-052-0165	7-26-05	Amend	9-1-05
818-042-0060	12-1-04	Amend	1-1-05	836-052-0165	8-1-05	Amend	7-1-05
818-042-0116	2-1-05	Amend	3-1-05	836-052-0175	8-1-05	Amend	7-1-05
818-042-0120	12-1-04	Amend	1-1-05	836-052-0180	7-26-05	Amend	9-1-05
818-042-0130	12-1-04	Amend	1-1-05	836-052-0180	8-1-05	Amend	7-1-05
820-010-0010	3-16-05	Amend	5-1-05	836-052-0500	3-1-05	Amend	4-1-05
820-010-0200	3-16-05	Amend	5-1-05	836-052-0510	3-1-05	Repeal	4-1-05
820-010-0203	6-9-05	Adopt(T)	7-1-05	836-052-0515	3-1-05	Repeal	4-1-05
820-010-0325	6-9-05	Amend(T)	7-1-05	836-052-0516	3-1-05	Adopt	4-1-05
820-010-0600	3-16-05	Amend	5-1-05	836-052-0520	3-1-05	Repeal	4-1-05
820-010-0622	3-16-05	Adopt	5-1-05	836-052-0525	3-1-05	Repeal	4-1-05
820-020-0040	3-16-05	Adopt	5-1-05	836-052-0526	3-1-05	Adopt	4-1-05
820-020-0045	3-16-05	Adopt	5-1-05	836-052-0530	3-1-05	Am. & Ren.	4-1-05
820-040-0040	3-16-05	Amend	5-1-05	836-052-0535	3-1-05	Am. & Ren.	4-1-05
834-010-0010	7-22-05	Amend	7-1-05	836-052-0536	3-1-05	Adopt	4-1-05
834-010-0015	7-22-05	Amend	7-1-05	836-052-0540	3-1-05	Repeal	4-1-05
834-010-0019	7-22-05	Adopt	7-1-05	836-052-0545	3-1-05	Am. & Ren.	4-1-05
834-010-0025	7-22-05	Amend	7-1-05	836-052-0546	3-1-05	Adopt	4-1-05
834-010-0030	7-22-05	Amend	7-1-05	836-052-0550	3-1-05	Am. & Ren.	4-1-05
836-009-0007	8-1-05	Amend	7-1-05	836-052-0556	3-1-05	Adopt	4-1-05
836-014-0400	3-21-05	Adopt	4-1-05	836-052-0565	3-1-05	Repeal	4-1-05
836-020-0210	8-1-05	Amend	7-1-05	836-052-0566	3-1-05	Adopt	4-1-05
836-020-0305	8-1-05	Amend	7-1-05	836-052-0570	3-1-05	Repeal	4-1-05
836-028-0020	8-1-05	Amend	7-1-05	836-052-0575	3-1-05	Am. & Ren.	4-1-05
836-031-0410	4-21-05	Amend	6-1-05	836-052-0580	3-1-05	Am. & Ren.	4-1-05
836-042-0045	4-7-05	Amend	5-1-05	836-052-0583	3-1-05	Am. & Ren.	4-1-05
836-042-0085	4-7-05	Amend	5-1-05	836-052-0588	3-1-05	Am. & Ren.	4-1-05
836-042-0310	8-1-05	Amend	7-1-05	836-052-0600	3-1-05	Am. & Ren.	4-1-05
836-042-0316	8-1-05	Amend	7-1-05	836-052-0605	3-1-05	Am. & Ren.	4-1-05
836-042-0322	8-1-05	Amend	7-1-05	836-052-0607	3-1-05	Repeal	4-1-05
836-043-0009	8-1-05	Amend	7-1-05	836-052-0610	3-1-05	Am. & Ren.	4-1-05
836-043-0017	8-1-05	Amend	7-1-05	836-052-0615	3-1-05	Am. & Ren.	4-1-05
836-043-0086	8-1-05	Amend	7-1-05	836-052-0616	3-1-05	Adopt	4-1-05
836-050-0010	8-1-05	Amend	7-1-05	836-052-0620	3-1-05	Am. & Ren.	4-1-05
836-050-0230	8-1-05	Amend	7-1-05	836-052-0636	3-1-05	Adopt	4-1-05

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836-052-0645	3-1-05	Am. & Ren.	4-1-05	836-074-0025	8-1-05	Amend	7-1-05
836-052-0676	3-1-05	Adopt	4-1-05	836-074-0030	8-1-05	Amend	7-1-05
836-052-0700	3-1-05	Amend	4-1-05	836-074-0035	8-1-05	Amend	7-1-05
836-052-0726	3-1-05	Adopt	4-1-05	836-074-0040	8-1-05	Amend	7-1-05
836-052-0746	3-1-05	Adopt	4-1-05	836-074-0045	8-1-05	Amend	7-1-05
836-052-0756	3-1-05	Adopt	4-1-05	836-074-0047	8-1-05	Amend	7-1-05
836-052-0766	3-1-05	Adopt	4-1-05	836-074-0048	8-1-05	Amend	7-1-05
836-053-0030	8-1-05	Amend	7-1-05	836-074-0050	8-1-05	Amend	7-1-05
836-053-0050	8-1-05	Amend	7-1-05	836-075-0000	8-1-05	Amend	7-1-05
836-053-0510	11-19-04	Amend	1-1-05	836-075-0070	8-1-05	Amend	7-1-05
836-053-1060	8-1-05	Amend	7-1-05	836-080-0001	8-1-05	Amend	7-1-05
836-054-0000	8-1-05	Amend	7-1-05	836-080-0005	8-1-05	Amend	7-1-05
836-062-0005	8-1-05	Amend	7-1-05	836-080-0014	8-1-05	Amend	7-1-05
836-071-0108	8-1-05	Adopt	7-1-05	836-080-0022	8-1-05	Amend	7-1-05
836-071-0112	8-1-05	Amend	7-1-05	836-080-0029	8-1-05	Amend	7-1-05
836-071-0127	8-1-05	Amend	7-1-05	836-080-0039	8-1-05	Amend	7-1-05
836-071-0148	8-1-05	Amend	7-1-05	836-080-0043	8-1-05	Amend	7-1-05
836-071-0150	8-1-05	Amend	7-1-05	836-080-0430	8-1-05	Amend	7-1-05
836-071-0160	8-1-05	Amend	7-1-05	836-080-0511	8-1-05	Amend	7-1-05
836-071-0180	8-1-05	Amend	7-1-05	836-080-0600	4-1-05	Adopt	5-1-05
836-071-0190	8-1-05	Amend	7-1-05	836-080-0610	4-1-05	Adopt	5-1-05
836-071-0195	8-1-05	Amend	7-1-05	836-080-0615	4-1-05	Adopt	5-1-05
836-071-0210	8-1-05	Amend	7-1-05	836-080-0620	4-1-05	Adopt	5-1-05
836-071-0215	8-1-05	Amend	7-1-05	836-080-0625	4-1-05	Adopt	5-1-05
836-071-0220	8-1-05	Amend	7-1-05	836-080-0630	4-1-05	Adopt	5-1-05
836-071-0225	8-1-05	Amend	7-1-05	836-080-0635	4-1-05	Adopt	5-1-05
836-071-0230	8-1-05	Amend	7-1-05	836-080-0640	4-1-05	Adopt	5-1-05
836-071-0235	8-1-05	Amend	7-1-05	836-080-0645	4-1-05	Adopt	5-1-05
836-071-0242	8-1-05	Amend	7-1-05	836-080-0650	4-1-05	Adopt	5-1-05
836-071-0250	8-1-05	Amend	7-1-05	836-080-0655	4-1-05	Adopt	5-1-05
836-071-0260	8-1-05	Adopt	7-1-05	836-080-0660	4-1-05	Adopt	5-1-05
836-071-0263	8-1-05	Adopt(T)	7-1-05	836-080-0665	4-1-05	Adopt	5-1-05
836-071-0267	8-1-05	Adopt	7-1-05	836-080-0670	4-1-05	Adopt	5-1-05
836-071-0269	8-1-05	Am. & Ren.	7-1-05	836-080-0675	4-1-05	Adopt	5-1-05
836-071-0272	8-1-05	Am. & Ren.	7-1-05	836-080-0680	4-1-05	Adopt	5-1-05
836-071-0274	8-1-05	Am. & Ren.	7-1-05	836-080-0685	4-1-05	Adopt	5-1-05
836-071-0277	8-1-05	Am. & Ren.	7-1-05	836-080-0690	4-1-05	Adopt	5-1-05
836-071-0277	8-1-05	Amend(T)	7-1-05	836-080-0695	4-1-05	Adopt	5-1-05
836-071-0280	8-1-05	Amend	7-1-05	836-080-0700	4-1-05	Adopt	5-1-05
836-071-0285	8-1-05	Amend	7-1-05	836-081-0101	8-1-05	Amend	7-1-05
836-071-0287	8-1-05	Amend	7-1-05	836-085-0001	8-1-05	Amend	7-1-05
836-071-0291	8-1-05	Am. & Ren.	7-1-05	836-085-0010	8-1-05	Amend	7-1-05
836-071-0295	8-1-05	Amend	7-1-05	836-085-0025	8-1-05	Amend	7-1-05
836-071-0297	8-1-05	Amend	7-1-05	836-085-0035	8-1-05	Amend	7-1-05
836-071-0310	8-1-05	Amend	7-1-05	836-085-0045	8-1-05	Amend	7-1-05
836-071-0321	8-1-05	Adopt	7-1-05	836-085-0201	4-7-05	Amend	5-1-05
836-071-0323	8-1-05	Amend	7-1-05	836-085-0220	4-7-05	Repeal	5-1-05
836-071-0326	8-1-05	Amend	7-1-05	836-085-0225	4-7-05	Amend	5-1-05
836-071-0328	8-1-05	Adopt	7-1-05	837-012-0310	6-7-05	Amend	7-1-05
836-071-0331	8-1-05	Amend	7-1-05	837-012-0315	6-7-05	Amend	7-1-05
836-071-0336	8-1-05	Amend	7-1-05	837-012-0320	6-7-05	Amend	7-1-05
836-071-0346	8-1-05	Amend	7-1-05	837-012-0330	6-7-05	Amend	7-1-05
836-074-0005	8-1-05	Amend	7-1-05	837-012-0510	12-13-04	Amend(T)	1-1-05
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837-012-0520	12-13-04	Amend(T)	1-1-05	837-085-0080	4-1-05	Amend	5-1-05
837-012-0520	6-7-05	Amend	7-1-05	837-085-0090	4-1-05	Amend	5-1-05
837-012-0525	12-13-04	Amend(T)	1-1-05	837-085-0110	4-1-05	Amend	5-1-05
837-012-0525	6-7-05	Amend	7-1-05	837-085-0180	4-1-05	Amend	5-1-05
837-012-0530	11-17-04	Amend(T)	1-1-05	837-085-0210	4-1-05	Amend	5-1-05
837-012-0530	6-7-05	Amend	7-1-05	837-085-0250	4-1-05	Amend	5-1-05
837-012-0540	12-13-04	Amend(T)	1-1-05	837-085-0260	4-1-05	Amend	5-1-05
837-012-0540	6-7-05	Amend	7-1-05	837-085-0270	4-1-05	Amend	5-1-05
837-012-0545	12-13-04	Amend(T)	1-1-05	837-085-0280	4-1-05	Amend	5-1-05
837-012-0545	6-7-05	Amend	7-1-05	837-085-0290	4-1-05	Amend	5-1-05
837-012-0555	1-13-05	Amend(T)	2-1-05	837-085-0300	4-1-05	Amend	5-1-05
837-012-0555	6-7-05	Amend	7-1-05	837-085-0305	4-1-05	Adopt	5-1-05
837-012-0610	2-15-05	Amend	3-1-05	837-085-0310	4-1-05	Amend	5-1-05
837-012-0610	6-7-05	Amend	7-1-05	837-085-0320	4-1-05	Amend	5-1-05
837-012-0615	2-15-05	Amend	3-1-05	837-085-0350	4-1-05	Amend	5-1-05
837-012-0620	2-15-05	Amend	3-1-05	837-090-1145	8-15-05	Amend	9-1-05
837-012-0620	6-7-05	Amend	7-1-05	839-003-0040	1-7-05	Amend	2-1-05
837-012-0625	2-15-05	Amend	3-1-05	839-004-0021	1-19-05	Amend	2-1-05
837-012-0635	6-7-05	Amend	7-1-05	839-009-0240	1-7-05	Amend	2-1-05
837-012-0640	6-7-05	Amend	7-1-05	839-009-0260	1-7-05	Amend	2-1-05
837-012-0645	2-15-05	Amend	3-1-05	839-010-0200	1-7-05	Adopt	2-1-05
837-012-0650	2-15-05	Amend	3-1-05	839-010-0205	1-7-05	Adopt	2-1-05
837-012-0650	6-7-05	Amend	7-1-05	839-010-0210	1-7-05	Adopt	2-1-05
837-012-0655	6-7-05	Amend	7-1-05	839-016-0000	3-1-05	Am. & Ren.	4-1-05
837-012-0670	2-15-05	Amend	3-1-05	839-016-0002	3-1-05	Am. & Ren.	4-1-05
837-012-0670	6-7-05	Amend	7-1-05	839-016-0003	3-1-05	Am. & Ren.	4-1-05
837-012-0750	2-15-05	Amend	3-1-05	839-016-0004	3-1-05	Am. & Ren.	4-1-05
837-012-1210	6-7-05	Amend	7-1-05	839-016-0006	3-1-05	Am. & Ren.	4-1-05
837-012-1220	6-7-05	Amend	7-1-05	839-016-0007	3-1-05	Am. & Ren.	4-1-05
837-012-1230	2-17-05	Amend	4-1-05	839-016-0008	3-1-05	Am. & Ren.	4-1-05
837-012-1240	6-7-05	Amend	7-1-05	839-016-0010	3-1-05	Am. & Ren.	4-1-05
837-012-1260	6-7-05	Amend	7-1-05	839-016-0013	3-1-05	Am. & Ren.	4-1-05
837-012-1290	6-7-05	Amend	7-1-05	839-016-0020	3-1-05	Am. & Ren.	4-1-05
837-012-1300	6-7-05	Amend	7-1-05	839-016-0025	3-1-05	Am. & Ren.	4-1-05
837-012-1310	6-7-05	Amend	7-1-05	839-016-0030	3-1-05	Am. & Ren.	4-1-05
837-012-1320	6-7-05	Amend	7-1-05	839-016-0033	3-1-05	Am. & Ren.	4-1-05
837-012-1390	6-7-05	Amend	7-1-05	839-016-0034	3-1-05	Am. & Ren.	4-1-05
837-012-1420	6-7-05	Amend	7-1-05	839-016-0035	3-1-05	Am. & Ren.	4-1-05
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837-020-0040	5-26-05	Amend	7-1-05	839-016-0043	3-1-05	Am. & Ren.	4-1-05
837-020-0050	5-26-05	Amend	7-1-05	839-016-0045	3-1-05	Am. & Ren.	4-1-05
837-020-0055	5-26-05	Amend	7-1-05	839-016-0050	3-1-05	Am. & Ren.	4-1-05
837-020-0060	5-26-05	Amend	7-1-05	839-016-0054	3-1-05	Am. & Ren.	4-1-05
837-020-0065	5-26-05	Amend	7-1-05	839-016-0060	3-1-05	Am. & Ren.	4-1-05
837-020-0070	5-26-05	Amend	7-1-05	839-016-0065	3-1-05	Am. & Ren.	4-1-05
837-020-0085	5-26-05	Amend	7-1-05	839-016-0080	3-1-05	Am. & Ren.	4-1-05
837-020-0105	5-26-05	Amend	7-1-05	839-016-0085	3-1-05	Am. & Ren.	4-1-05
837-020-0115	5-26-05	Amend	7-1-05	839-016-0090	3-1-05	Am. & Ren.	4-1-05
837-020-0120	5-26-05	Adopt	7-1-05	839-016-0095	3-1-05	Am. & Ren.	4-1-05
837-020-0125	5-26-05	Amend	7-1-05	839-016-0100	3-1-05	Am. & Ren.	4-1-05
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837-040-0010	6-27-05	Amend	8-1-05	839-016-0155	3-1-05	Am. & Ren.	4-1-05
837-085-0020	4-1-05	Amend	5-1-05	839-016-0200	3-1-05	Am. & Ren.	4-1-05
837-085-0030	4-1-05	Amend	5-1-05	839-016-0210	3-1-05	Am. & Ren.	4-1-05
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839-016-0240	3-1-05	Am. & Ren.	4-1-05	847-080-0018	7-20-05	Amend	9-1-05
839-016-0300	3-1-05	Am. & Ren.	4-1-05	848-001-0000	12-29-04	Amend	2-1-05
839-016-0310	3-1-05	Am. & Ren.	4-1-05	848-001-0005	12-29-04	Amend	2-1-05
839-016-0320	3-1-05	Am. & Ren.	4-1-05	848-005-0010	4-8-05	Amend	5-1-05
839-016-0330	3-1-05	Am. & Ren.	4-1-05	848-005-0030	12-29-04	Adopt	2-1-05
839-016-0340	3-1-05	Am. & Ren.	4-1-05	848-010-0010	12-29-04	Amend	2-1-05
839-016-0500	3-1-05	Am. & Ren.	4-1-05	848-010-0015	12-29-04	Amend	2-1-05
839-016-0510	3-1-05	Am. & Ren.	4-1-05	848-010-0020	12-29-04	Amend	2-1-05
839-016-0520	3-1-05	Am. & Ren.	4-1-05	848-010-0026	12-29-04	Amend	2-1-05
839-016-0530	3-1-05	Am. & Ren.	4-1-05	848-010-0033	12-29-04	Adopt	2-1-05
839-016-0540	3-1-05	Am. & Ren.	4-1-05	848-010-0035	12-29-04	Amend	2-1-05
839-016-0700	12-13-04	Amend	1-1-05	848-010-0044	12-29-04	Adopt	2-1-05
839-016-0700	1-1-05	Amend	2-1-05	848-010-0045	12-29-04	Repeal	2-1-05
839-016-0700	3-1-05	Am. & Ren.	4-1-05	848-010-0050	12-29-04	Repeal	2-1-05
839-016-0750	3-1-05	Am. & Ren.	4-1-05	848-010-0060	12-29-04	Repeal	2-1-05
839-021-0106	1-3-05	Adopt	2-1-05	848-010-0070	12-29-04	Repeal	2-1-05
839-021-0355	1-3-05	Amend	2-1-05	848-010-0080	12-29-04	Repeal	2-1-05
839-025-0700	4-1-05	Amend	5-1-05	848-010-0090	12-29-04	Repeal	2-1-05
839-025-0750	4-18-05	Amend	5-1-05	848-010-0105	12-29-04	Renumber	2-1-05
839-025-0750	5-2-05	Amend	6-1-05	848-010-0110	12-29-04	Am. & Ren.	2-1-05
839-025-0750	6-1-05	Amend	7-1-05	848-010-0115	12-29-04	Renumber	2-1-05
839-025-0750	6-21-05	Amend	8-1-05	848-010-0120	12-29-04	Am. & Ren.	2-1-05
839-025-0750	7-1-05	Amend	8-1-05	848-010-0125	12-29-04	Repeal	2-1-05
839-025-0750	7-22-05	Amend	9-1-05	848-015-0010	12-29-04	Adopt	2-1-05
839-025-0750	8-10-05	Amend	9-1-05	848-015-0020	12-29-04	Adopt	2-1-05
839-050-0050	2-11-05	Amend	3-1-05	848-015-0030	12-29-04	Adopt	2-1-05
839-050-0220	2-11-05	Amend	3-1-05	848-020-0000	12-29-04	Amend	2-1-05
839-050-0360	2-11-05	Amend	3-1-05	848-020-0010	12-29-04	Amend	2-1-05
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845-003-0670	5-1-05	Amend	6-1-05	848-020-0030	12-29-04	Amend	2-1-05
845-004-0020	5-1-05	Amend	6-1-05	848-020-0040	12-29-04	Amend	2-1-05
845-004-0101	1-1-05	Amend	1-1-05	848-020-0050	12-29-04	Amend	2-1-05
845-005-0303	5-1-05	Amend	6-1-05	848-020-0060	12-29-04	Amend	2-1-05
845-005-0312	1-1-05	Amend	2-1-05	848-030-0000	12-29-04	Amend	2-1-05
845-005-0314	5-1-05	Amend	6-1-05	848-030-0010	12-29-04	Amend	2-1-05
845-006-0434	5-1-05	Amend	6-1-05	848-040-0000	12-29-04	Repeal	2-1-05
845-006-0475	5-1-05	Amend	6-1-05	848-040-0010	12-29-04	Repeal	2-1-05
845-009-0010	7-1-05	Amend	7-1-05	848-040-0020	12-29-04	Repeal	2-1-05
845-009-0015	7-1-05	Amend	7-1-05	848-040-0030	12-29-04	Repeal	2-1-05
845-009-0135	5-1-05	Amend	6-1-05	848-040-0040	12-29-04	Repeal	2-1-05
845-009-0200	1-1-05	Amend	2-1-05	848-040-0050	12-29-04	Repeal	2-1-05
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845-010-0915	12-1-04	Amend	1-1-05	848-040-0105	12-29-04	Adopt	2-1-05
845-015-0143	6-1-05	Amend	7-1-05	848-040-0110	12-29-04	Adopt	2-1-05
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847-015-0025	1-27-05	Amend	3-1-05	848-040-0130	12-29-04	Adopt	2-1-05
847-020-0130	7-20-05	Amend	9-1-05	848-040-0135	12-29-04	Adopt	2-1-05
847-020-0160	7-20-05	Amend	9-1-05	848-040-0140	12-29-04	Adopt	2-1-05
847-020-0170	7-20-05	Amend	9-1-05	848-040-0145	12-29-04	Adopt	2-1-05
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848-045-0020	12-29-04	Adopt	2-1-05	860-011-0001	12-30-04	Amend	2-1-05
848-050-0000	12-29-04	Repeal	2-1-05	860-011-0010	12-30-04	Amend	2-1-05
848-050-0010	12-29-04	Repeal	2-1-05	860-011-0011	12-30-04	Adopt	2-1-05
848-050-0020	12-29-04	Repeal	2-1-05	860-011-0012	12-30-04	Adopt	2-1-05
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860-032-0097	12-1-04	Amend	1-1-05	860-037-0410	12-30-04	Amend	2-1-05
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918-400-0740	4-1-05	Amend	5-1-05	918-550-0140	5-1-05	Adopt	6-1-05
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918-460-0015	7-5-05	Amend	8-1-05	918-550-0180	5-1-05	Adopt	6-1-05
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