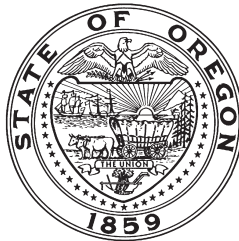


OREGON BULLETIN

Supplements the 2005 *Oregon Administrative Rules Compilation*

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Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule's "History"

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

Locating the Most Recent Version of an Administrative Rule

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

Locating Administrative Rules Unit Publications

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

2004-2005 Oregon Bulletin Publication Schedule

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

Submission Deadline — Publishing Date

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

Reminder for Agency Rules Coordinators

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

Publication Authority

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

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EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 05-02

DETERMINATION OF A STATE OF DROUGHT EMERGENCY IN BAKER COUNTY AND KLAMATH COUNTY DUE TO DROUGHT AND LOW WATER CONDITIONS

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

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

A timely response to this situation being vital to the well-being and economic security of the citizens and businesses of Baker and Klamath Counties, I hereby declare a "state of drought emergency" in Baker and Klamath Counties and direct the following activities:

IT IS HEREBY ORDERED AND DIRECTED:

I. The Oregon Department of Agriculture is directed to coordinate and provide assistance in seeking federal resources that may be available to mitigate conditions and to assist agricultural recovery in Baker and Klamath Counties.

II. The Department of Water Resources is directed to coordinate and provide assistance and regulation for Baker and Klamath Counties as it determines is necessary and in accordance with ORS 536.700 to 536.780.

III. The Office of Emergency Management is directed to coordinate and assist as needed with assessment and mitigation activities to address current and projected drought conditions in Baker and Klamath Counties.

IV. All other departments are directed to coordinate with the above agencies and to provide appropriate state resources as determined essential to assist the effected political subdivisions in Baker and Klamath Counties.

V. This Executive Order expires on December 31, 2005

Done at Salem, Oregon this 8th day of March, 2005.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. 05-03

AUTHORIZATION FOR OREGON DEPARTMENT OF ENERGY ACCESS TO LAW ENFORCEMENT DATA SYSTEM

ORS 181.010(6) and OAR 257-010-0025(1)(b) authorize the Governor to allow Law Enforcement Data System access to designated state and local agencies which require such information "for agency employment purposes, licensing purposes or other demonstrated needs when designated by order of the Governor." Executive Order No. 90-05 grants such access to a number of state agencies and establishes the conditions under which such access is authorized. Subsequent Executive Orders have authorized additional state agencies to access such information for various purposes.

The Oregon Department of Energy (the "Department") has requested access to the Oregon State Police criminal offender information system for the purpose of conducting background investigations on prospective employees where the protection of public safety and/or the maintenance of confidential information make such investigations advisable.

Various employment positions within the Department, including those that involve job functions at the Hanford Nuclear Facility, nuclear safety, the production, storage and shipment of nuclear waste, and access to confidential information submitted to or in the possession of the Department, are positions where the protection of public safety and/or the maintenance of confidential information make such investigations advisable.

THEREFORE, IT IS ORDERED AND DIRECTED:

1. Pursuant to ORS 181.010(6) and OAR 257-010-0025(1)(B), I hereby authorize the Oregon State Police to provide the Department with access to the Oregon State Police criminal offender information system solely for the purpose of conducting background investigations on prospective employees for those positions where the Department concludes that protection of public safety and/or the maintenance of confidential information make such investigation advisable. Such positions include, but are not limited to, those that involve job functions at the Hanford Nuclear Facility, nuclear safety, the production, storage, and shipment of nuclear waste, and access to confidential information submitted to or in the possession of the Department.

2. Executive Order No. 90-05 continues to govern the compilation, maintenance, and dissemination of criminal offender information as defined in ORS 181.010(3), and that Order governs the access to the Oregon State Police criminal offender information system authorized by this Order.

3. This Order is effective immediately and expires five years after the date of its issuance.

Done at Salem, Oregon, this 8th day of March, 2005.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

OTHER NOTICES

CHANCE TO COMMENT ON... PROPOSED CLEANUP METHOD FOR THE CAROUSEL CLEANERS SITE OREGON CITY, OREGON

COMMENTS DUE: May 2, 2005

PROJECT LOCATION: 927 Molalla Avenue in Oregon City, 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 the proposed interim cleanup method for the Carousel Cleaners site in Oregon City, Oregon.

HIGHLIGHTS: Carousel Cleaners is an active dry cleaning facility located at 927 Molalla Avenue in Oregon City, Oregon. The property has been used as a dry cleaning operation since approximately 1963. The site includes a dry cleaners operation, boiler room, coin-operated laundromat area, and parking areas.

Carousel Cleaners retained a private contractor to conduct sampling at the dry cleaners property in the summer of 1999. Perchloroethylene (PCE), a dry cleaning solvent, was detected in a soil sample collected just outside the back door of the cleaners. PCE was also detected in a soil boring located within the dry cleaners and in groundwater from an on-site water supply well, which only serves the on-site coin operated laundromat. Carousel subsequently applied to DEQ's Dry Cleaner Program in August 1999, and was accepted the following month.

DEQ retained a contractor to conduct further investigations of the Carousel Cleaners facility in December 1999. Two phases of field work were completed in 2000, which confirmed the release of PCE to the environment. The levels of PCE found, however, did not appear to indicate significant releases of PCE had occurred that might pose an unacceptable risk to human health and the environment. DEQ therefore chose to continue with periodic groundwater monitoring followed by completion of a risk assessment.

Groundwater monitoring completed in May 2001 showed significant increases in PCE contamination in shallow groundwater from approximately 650 parts per billion (ppb) to over 20,000 ppb in the area next to the side entrance for the dry cleaner building. Based on these findings, DEQ proceeded with a pilot study to biologically treat the soil and groundwater contamination. The pilot study, which began in March 2002, involved injecting bacteria capable of degrading PCE into the contaminated area and groundwater monitoring during 2002 and 2003. Monitoring results showed a significant decline in PCE concentrations in response to treatment, but later showed a return of high PCE concentrations in the treatment area.

In 2004, DEQ's contractor conducted additional testing of soil and groundwater at the site to assess why PCE concentrations in groundwater rebounded following treatment. The investigation discovered significant soil contamination above the water table that wasn't effectively treated using biological methods. Additional studies were completed to evaluate the options to cleanup the soil. Based on these studies, DEQ selected soil vapor extraction (SVE) treatment for the soil as the most effective and economical treatment method. SVE involves stripping the PCE solvent vapors from the soil with an applied vacuum on slotted piping installed in the contaminated area and filtering the PCE from the vapors with a carbon filtration treatment system. The treated air is discharged to the atmosphere and the carbon is transported to a treatment/disposal facility. DEQ projects that the treatment system will need to be operated for approximately 1 year to remove the PCE solvent from the soil. Additional cleanup measures for groundwater will be developed during performance of the soil cleanup.

HOW TO COMMENT: An Interim Remedial Action Work Plan and other 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 Bruce Gilles, Project Manager, at the address listed above or via email at gilles.bruce@deq.state.or.us. by 5 p.m., May 2, 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 deadline. In the absence of comments, DEQ will proceed with cleanup measures using SVE.

A CHANCE TO COMMENT ON... PROPOSED CONSENT JUDGMENT FOR A PROSPECTIVE PURCHASER AGREEMENT AT THE FORMER CHARLES LILLY FACILITY IN PORTLAND, OREGON

COMMENTS DUE: May 2, 2005

PROJECT LOCATION: 7737 N.E Killingsworth Street, Portland, Oregon.

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to enter into a Consent Judgment for a Prospective Purchaser Agreement (PPA) with MJB Associates, LLC and Acme Scenic & Display, Inc. for the property located at 7737 N.E Killingsworth Street, Portland, Oregon (Lilly Property).

HIGHLIGHTS: The Lilly Property was formerly owned by the Miller Products Company, W.R. Grace & Company, and Charles. H. Lilly Company, among others, and used to formulate various agricultural chemicals. During operations, hazardous substances were released into the ground and groundwater at the property; such releases may extend onto and beneath adjacent properties.

The Prospective Purchaser Agreement will require MJB and Acme Scenic, jointly, to implement certain agreed-upon removal and remedial measures to address contamination at the Lilly Property. Those measures will include: abandonment of existing dry wells, removal of contaminated soil, installation of a new stormwater management system, repavement of the site, and implementation of institutional controls.

DEQ's Prospective Purchaser Program was created in 1995 through amendments to the state's Environmental Cleanup Law. The Prospective Purchaser Agreement is a tool that facilitates the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a property with existing contamination. DEQ has approved 63 Prospective Purchaser Agreements throughout the State since the program began.

The proposed Consent Judgment will provide MJB as the new owner and Acme Scenic as the tenant with a release from liability for claims by the State of Oregon under ORS 465.255 relating to historical releases of hazardous substances at or from the site. The proposed Consent Judgment will also provide MJB and Acme Scenic with protection from potential contribution actions by third parties relating to the releases at or from the Lilly Property. DEQ retains all existing rights it may have as to all other parties potentially liable for the releases.

HOW TO COMMENT: Written comments concerning the proposed Consent Judgment should be sent to Charlie Landman at DEQ Headquarters, 811 SW 6th Avenue, Portland, Oregon 97204. Comments must be received by DEQ by 5:00 pm May 2, 2005. Questions may be directed to Mr. Landman at that address or by calling (503) 229-6461. The proposed Consent Judgment and DEQ file on the Lilly Property may be reviewed at DEQ's Northwest Region office in Portland by contacting Bob Williams at (503) 229-6802.

OTHER NOTICES

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

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

A CHANCE TO COMMENT ON... PROPOSED CONSENT JUDGMENT FOR A PROSPECTIVE PURCHASER AGREEMENT AND AN EQUITABLE SERVITUDE AND EASEMENT AT THE BERTELSEN/LDI FACILITY IN EUGENE, OREGON

COMMENTS DUE: May 2, 2005

PROJECT LOCATION: 1400 South Bertelsen Road, Eugene, Oregon.

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to enter into a Consent Judgment for a Prospective Purchaser Agreement (PPA) and a revised Easement and Equitable Servitude with Bertelsen Business Park, LLC for the property located at 1400 South Bertelsen Road, Eugene, Oregon (Property).

HIGHLIGHTS: From 1962 until 2003, the Property was used by Bertelsen, Inc. and Laurence-David, Inc., among others, for the manufacture of specialty paint and putty. During operations, hazardous substances were released into the ground and groundwater at the Property. Bertelsen, Inc. has entered into a Consent Judgment with DEQ for implementation of remedial measures to address those historic releases.

Under the proposed Prospective Purchaser Agreement, Bertelsen Business Park, LLC will deposit funds into an escrow account dedicated to implementation of the selected remedial measures. Bertelsen Business Park, LLC will provide additional funding to improve the selected soil cap by paving portions of the Property. Bertelsen Business Park, LLC will also refurbish the existing, vacant building and put it back into productive use. Bertelsen Business Park, LLC, has no affiliation with the current owner of the Property, Bertelsen, Inc.

DEQ's Prospective Purchaser Program was created in 1995 through amendments to the state's Environmental Cleanup Law. The Prospective Purchaser Agreement is a tool that facilitates the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a property with existing contamination. DEQ has approved 63 Prospective Purchaser Agreements throughout the State since the program began.

The proposed Consent Judgment will provide Bertelsen Business Park, LLC with a release from liability for claims by the State of Oregon under ORS 465.255 relating to historical releases of hazardous substances at or from the Property. The proposed Consent Judgment will also provide Bertelsen Business Park, LLC with protection from potential contribution actions by third parties relating to the releases at or from the Property. DEQ retains all existing rights it may have as to parties potentially liable for the releases.

The Equitable Servitude and Easement will provide for restrictions on uses on certain portions of the property to protect human health and the Environment.

HOW TO COMMENT: Written comments concerning the proposed Consent Judgment or the Equitable Servitude and Easement should be sent to Charlie Landman at DEQ Headquarters, 811 SW 6th Avenue, Portland, Oregon 97204. Comments must be received by DEQ by 5:00 pm May 2, 2005. Questions may be directed to Mr. Landman at that address or by calling (503) 229-6461. The proposed Consent Judgment and DEQ file on the Bertelsen/LDI facility may be reviewed at DEQ's Western Region office in Eugene by contacting Nancy Gramlich at (503) 378-8240 x259.

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

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

PROPOSED REMEDIAL ACTION AT THE HINKLE RAIL YARD, HINKLE, OREGON

COMMENTS DUE: May 2, 2005

PROJECT LOCATION: Hinkle, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to approve a remedial action at the Hinkle Rail Yard, located in Hinkle, Umatilla County, Oregon.

HIGHLIGHTS: The DEQ Voluntary Cleanup Program has reviewed the information gathered during remedial investigation, risk assessment, and feasibility study at the Hinkle Rail Yard. The Hinkle Rail Yard is operated by Union Pacific Railroad, and is the location of historic releases of diesel fuel to the subsurface over decades of locomotive fueling and maintenance.

The proposed remedial action includes the installation of wells in the western portion of the site which will be used to recover diesel fuel from the water table at depths of approximately 100 feet. Vacuum will be applied to the recovery wells in order to enhance product recovery. The intent of the remedial system is to maximize product recovery to stop the possible spread of contaminants to areas outside of the rail yard property. Groundwater monitoring will be performed in this area until remediation goals are met. Institutional controls (deed restrictions) which will limit uses of groundwater, will be placed on affected portions of the site.

The diesel plume on the east side of the site, in the area of the former waste lagoons, was determined to be immobile. Due to the lack of mobility of the eastern product plume, no active remediation system is proposed. Instead, groundwater monitoring and institutional controls are proposed for this area.

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 ask questions, please contact the project manager, John Dadoly, at (541) 278-4616. Written comments should be sent to John Dadoly, at the address listed above by May 2, 2005.

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 issuing a record of decision for the site.

CONDITIONAL APPROVAL OF ENVIRONMENTAL CLEANUP

PROJECT LOCATION: Haggen Parcel (Former Cobb's Quarry Landfill), SW Murray Boulevard and SW Maverick Terrace in Beaverton, Oregon.

CLEANUP METHOD: The presence of methane gas from fill materials beneath the site has been mitigated through the installation of an impermeable barrier under the Haggen building, a passive venting system beneath the asphalt parking area, impermeable barriers in utility corridors, ongoing methane monitoring, and an easement on property use.

HIGHLIGHTS: From the 1970s to the early 1990s, a large excavation created by the site's former quarrying activities was filled with soil, rock, concrete, asphalt, and organic materials including sod and brush. Decomposing organic materials in the fill are the source of methane beneath the property. Methane gas is potentially explosive if allowed to accumulate in confined spaces. Mitigation measures are designed to prevent methane from accumulating at potentially explosive concentrations. Briar Development Company has completed implementation of the mitigation measures as part of the Haggen

OTHER NOTICES

store development with oversight by DEQ through the Voluntary Cleanup Program. DEQ is proposing to approve Briar Development's completion of the mitigation measures and issue a conditional "no further action" determination for the site. DEQ's conditions are continued methane monitoring and reporting, and compliance with the Easement and Declarations of Restrictions for the property.

The draft Project Completion Report and associated reports on the project are 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. Questions about the project should be directed to the DEQ Project Manager, Tom Roick, telephone 503-229-5502 or email roick.tom@deq.state.or.us.

NOTICE FOR COMMENT ON... PROPOSED CLEANUP APPROACH COLUMBIA SLOUGH SEDIMENTS

COMMENTS DUE: May 16, 2005

PROJECT LOCATION: Columbia Slough, from Fairview Lake to Willamette River

PROPOSAL: As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on the proposed cleanup approach for contaminated sediments in the Columbia Slough. The proposed approach includes source control at individual sites and for widespread pervasive sources of contamination, active cleanup of "hot spots" of contamination, natural recovery for widespread low levels of contamination, and long-term monitoring and evaluation.

HIGHLIGHTS: The Columbia Slough Watershed drains approximately 32,700 acres of land that includes a wide range of uses: residential neighborhoods, commercial and industrial development, agriculture, Portland International Airport, interstate highways, railroad corridors, schools, and open space. As a result of urbanization, industrial releases, and runoff from agricultural land, sediments in the Columbia Slough have become contaminated. Uptake of contaminants by aquatic organisms including fish poses a risk to people and wildlife that eat the fish, and the contaminated sediments may also be toxic to organisms that live in the sediments. Sediment contaminants include PCBs, metals, pesticides, polycyclic aromatic hydrocarbons, and phthalates.

The ultimate goal of the proposed approach is to reduce sediment contamination to protective levels. This will be achieved through a combination of source control measures, active sediment cleanup, natural recovery, long-term monitoring, and adaptive management.

HOW TO COMMENT: The DEQ's staff report on the proposed cleanup approach will be available for public review at the downtown branch of the Portland Public Library, Park Rose High School library, and DEQ's Northwest Region Office in Portland beginning April 1, 2005. To schedule an appointment to review files in DEQ's Northwest Region office, call (503) 229-6729. The DEQ Project Manager is Jennifer Sutter, (503) 229-6148. 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 May 16, 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 NO FURTHER ACTION AND DE-LISTING DECISION, PORTLAND INTERNATIONAL AIRPORT AIRCRAFT SERVICE INTERNATIONAL GROUP (ASIG) JET FUEL TRANSMISSION LINE AREA PORTLAND, OREGON

COMMENT PERIOD: April 1, 2005 to April 30, 2005

COMMENTS DUE: April 30, 2005

PROPOSAL: DEQ proposes de-listing and issuing a no further action decision for the Portland International Airport ASIG (formerly ASII) Jet Fuel Transmission Line Area site. The Jet Fuel Transmission Line Area site is located at the northwest end of the airport. The transmission lines consist of a series of eight connected subsurface line segments with valves at each of the connecting points.

HIGHLIGHTS: The Department of Environmental Quality (DEQ) has completed its environmental evaluation of the ASIG Jet Fuel Transmission Line Area site. An investigation was initiated in 1997, when ASII personnel found jet fuel in a storm water sample collected approximately 50 feet northeast of the jet fuel line, apparently due to historic releases around the pipe valves.

Environmental investigations completed between August 1997 and December 2003 included soil and groundwater sampling and testing. The environmental testing at the site identified petroleum hydrocarbon constituents in site soil and groundwater. Pipeline integrity testing conducted in 1998 and 2002 showed that there were no active leaks. In February 1998, the storm drain line that runs parallel to the transmission line was slip-lined to prevent impacted groundwater from entering the stormwater system.

DEQ completed a risk screening of the 1997 and 2003 data to evaluate potential human health and ecological risks posed by residual petroleum hydrocarbon constituents in site soil and groundwater. The findings of the risk screening indicate that the residual impacts do not pose an unacceptable risk to human health or the environment. The site was placed on DEQ's Inventory of sites that have a confirmed release and need additional investigation on June 10, 2003 as required by ORS 465.225. Based on the risk screening results, DEQ proposes removal from the Inventory under ORS 465.230(1).

HOW TO COMMENT: The project file is available for public review. To schedule an appointment call (503) 229-6729. The DEQ project manager is Anna Coates, (503) 229-5213. Written comments should be sent to Anna Coates, DEQ, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by April 30, 2005. A public meeting will be held to receive comments if requested by 10 or more persons or by a group with a membership of 10 or more.

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

PROPOSED NO FURTHER ACTION MCEWAN RANCH SPILL WALLOWA COUNTY, OREGON

COMMENTS DUE: May 2, 2005

PROJECT LOCATION: 61720 Lime Quarry Road, Enterprise, Oregon

PROPOSAL: The Department of Environmental Quality is proposing to issue a "No Further Action" determination based on soil excavation actions performed at the McEwan Ranch Spill site located at 61720 Lime Quarry Road in Enterprise, Oregon.

HIGHLIGHTS: On November 6, 2004, a pickup truck, eluding police, missed a turn on Lime Quarry Road went airborne and landed on top of an above ground storage tank (AST) causing the release of the AST's contents. The AST stored diesel and was associated with the McEwan Ranch operations. In response to the release, about 365 tons of petroleum contaminated soil (PCS) were excavated and transported to Columbia Ridge Landfill in Arlington, Oregon for disposal. The excavation extended to a depth of 21 feet below ground surface. Confirmation soil samples collected from the final extent of the excavation were significantly below the generic soil concentrations listed in the "Risk-Based Decision Making for the Remediation of Petroleum-Contaminated Sites" (RBDM) guidance dated September 22, 2003.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson

OTHER NOTICES

at (541) 278-4620. Written comments should be received by May 2, 2005 and sent to Katie Robertson, Project Manager, at the address listed above.

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

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

DEQ APPROVES FINAL CLEANUP ACTIONS FOR AREAS INVESTIGATED AT WAH CHANG IN MILLERSBURG

DECISION: On March 15, 2005, the Department of Environmental Quality (DEQ)

issued final approval for 32 areas of environmental concern that were investigated at the Wah Chang plant in Millersburg.

PROJECT LOCATION: Wah Chang is north of Albany in Millersburg, Oregon at 1600 Old Salem Road NE. The plant occupies 110 acres bounded by I-5 and the Willamette River, and an additional 65 acres one mile north of the 110 acres.

FACILITY OPERATIONS: Wah Chang manufactures zirconium and other specialty metals. Operations at the Millersburg plant began in 1956. Facilities were constructed at the site primarily to produce zirconium and hafnium metal products. Melting and fabrication operations were added in 1959. The metals refined at the plant are turned into a wide range of products ranging from tubes and plates to wire.

BACKGROUND: From October 2001 through November 2004, Wah Chang prepared and submitted work plans to DEQ that investigated the potential release of contaminants, such as solvents; PCBs; petroleum compounds; metals; radionuclides; fluorides; and nitrates at 32 areas of concern. The information, along with DEQ site visits, demonstrated that releases or suspected releases of contaminants have met one or more of the following conditions:

- Are or were non-existent or posed no risk to human health or the environment;
- Currently permitted or regulated under another authority;
- Mitigated by implementation of cleanup remedies (site excavations and disposal actions, capping of contaminated areas to prevent exposure); and
- Impractical to completely investigate and/or mitigate, with current and future facility environmental programs in-place to mitigate exposure to people or environmental receptors by potential contaminants.

Based on the review of information for these areas, DEQ determined that no additional investigation or action is required at these locations. A no further action does not preclude DEQ from modifying their decision should new or previously undisclosed information indicate that there is, or may be, a release from the location that poses a threat to human health or the environment.

Prior to issuing the final decision, a formal public review and comment period was held from January 3, 2005 through February 1, 2005. No comments were received.

ADDITIONAL INFORMATION: For additional information regarding the site cleanup, contact DEQ Project Manager, Nancy Gramlich at (503) 378-8240 x259 or by email at gramlich.nancy@deq.state.or.us.

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.

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**Board of Architect Examiners
Chapter 806**

Date: 4-28-05 **Time:** 9 a.m. **Location:** OBAE
205 Liberty St. NE, #A
Salem, OR

Hearing Officer: Kim Arbuckle

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.050 & 671.060

Proposed Amendments: 806-010-0020

Last Date for Comment: 4-28-05, 10 a.m.

Summary: This rule is amended to allow passing grades for the Architectural Registration Examination (ARE) to remain acceptable for a five-year period of time, outlines how that five-year period rolls, and allows for a transition period.

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

Rules Coordinator: Carol Halford

Address: Oregon Board of Architect Examiners, 205 Liberty St. NE, Suite A, Salem, OR 97301

Telephone: (503) 763-0662

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**Board of Medical Examiners
Chapter 847**

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265

Proposed Adoptions: 847-017-0000, 847-017-0005, 847-017-0010, 847-017-0015, 847-017-0020, 847-017-0025, 847-017-0030, 847-017-0035, 847-017-0040, 847-017-0045, 847-017-0050, 847-017-0055, 847-017-0060

Last Date for Comment: 5-23-05

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

Rules Coordinator: Diana M. Dolstra

Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite 620, Portland, OR 97201-5826

Telephone: (503) 229-5873, ext. 223

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**Board of Tax Practitioners
Chapter 800**

Date: 4-26-05 **Time:** 9 a.m. **Location:** 3218 Pringle Rd. SE, #120
Salem, OR 97302

Hearing Officer: Monica J. Leisten

Stat. Auth.: ORS 673.605 - 673.740 & 673.990

Stats. Implemented: ORS 673.605 - 673.740 & 673.990

Proposed Amendments: 800-020-0020

Last Date for Comment: 4-26-05, 5 p.m.

Summary: 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.

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

Rules Coordinator: Monica J. Leisten

Address: Board of Tax Practitioners, 3218 Pringle Rd. SE, # 120, Salem, OR 97302

Telephone: (503) 378-4034

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

Date: 4-21-05 **Time:** 7:30 p.m. **Location:** 3415 Commercial St. SE
Salem, OR

Hearing Officer: Peter Kenagy

Stat. Auth.: ORS 576.051 - 576.595

Stats. Implemented: ORS 576.051 - 576.595

Proposed Amendments: 647-010-0010

Last Date for Comment: 4-21-05, 7:30 p.m.

Summary: The proposed rule amendments set the assessment rates for the six processed vegetable crops governed by the commission.

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

Rules Coordinator: John McCulley

Address: Department of Agriculture, Processed Vegetable Commission, PO Box 2042, Salem, OR 97308-2042

Telephone: (503) 370-7019

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

Date: 4-19-05 **Time:** 9:30 a.m. **Location:** 1535 NW Edgewater St.
Salem, OR 97309

Hearing Officer: Casey Hoyer

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 918-282-0230

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

Summary: This rulemaking will reduce the minimum number of electrical related training hours required for an approved training program for a Limited Journeyman Stage Electrician license.

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

Rules Coordinator: Heather L. Gravelle

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

Telephone: (503) 373-7438

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

| Date: | Time: | Location: |
|---------|------------|---|
| 4-25-05 | 10:30 a.m. | 350 Winter St. NE Labor & Industries Bldg. Basement - Conf. Rm. F Salem, OR 97301-3882 |

Hearing Officer: Marilyn Schuster

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

Stats. Implemented: ORS 654.001 - 654.295

Proposed Amendments: 437-002-0182

Last Date for Comment: 4-29-05

Summary: In late 2003 Oregon OSHA discovered that the requirements for live fire training, in OAR 437-002-0182(10)(c), are not usable, and in fact, don't exist. The Oregon State Fire Marshal's standard (OAR 837-010-0070(3)(b)(c) and (d)) that Oregon OSHA's rule refers to was repealed several years ago, and no other standard has been adopted in its place. OR-OSHA contacted some fire departments, and DPSST to review a variety of programs for live fire training. It became clear that the programs, though different, were usually based on the NFPA standard for live fire training. Oregon OSHA decided to ask for assistance from the Oregon OSHA Fire Fighters Advisory Committee (a standing committee with representatives from various parts of the Fire Service) to select, or develop a standard for live fire training. The first meeting was held in March, 2004, followed by five more meetings, ending in November. The Committee based the development of a new standard, focused on occupational safety and health of fire fighters during live fire training, on NFPA 1403, Live Fire Training. Acceptable sources of ignition became a major topic. A petition for the use of drip torches was sent to the NFPA 1403 Subcommittee on Ignition Sources. The subcommittee agreed that ignition sources need to be addressed in the next (2007) draft of NFPA 1403. Unofficial acceptance by the subcommittee was given for the use of fusees. After further studying the use and safety of drip torches, the Oregon OSHA Fire Fighters Advisory Committee recommended allowing use of drip torches in the proposed standard. Another major topic for discussion was calculation of water supply. Consensus of the committee was to use the calculations of NFPA 1142, 2001 edition, for the minimum water supply. **Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Sue C. Joye

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

Telephone: (503) 947-7449

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

| Date: | Time: | Location: |
|---------|---------|---|
| 4-22-05 | 10 a.m. | 350 Winter St. NE Rm. F (basement, Labor & Industries Bldg.) Salem, OR |

Hearing Officer: Fred Bruyns

Stat. Auth.: ORS 656.283, 656.340, 656.622, 656.704 & 656.726(4); Other Auth.: ORS 183.335, OAR 137-001 & 436-001

Stats. Implemented: ORS 656, 656.340 & 656.622

Proposed Adoptions: 436-110-0290, 436-110-0326, 436-110-0327, 436-110-0336, 436-110-0337, 436-110-0346, 436-110-0347, 436-110-0351, 436-110-0352

Proposed Amendments: 436-001-0265, Rules in 436-105, 436-110, 436-120

Proposed Repeals: 436-120-0410

Last Date for Comment: 4-29-05

Summary: The agency proposes to amend OAR 436-001-0265, "Attorney Fees." This proposed rule:

- Clarifies that extraordinary circumstances, for the purpose of determining attorney fees, are not established by merely exceeding eight professional hours or exceeding a benefit to the worker of \$6000. This proposed rule change is consistent with changes to OAR 436-010-0008, proposed January 14, 2005, and to OAR 436-120-0008, proposed March 9, 2005 (see below).

The agency proposes to amend OAR 436-105, "Employer-at-Injury Program." These proposed rules:

- Allow the insurer to request that reimbursement be based on the rules in effect on the date an individual Employer-at-Injury Program began; otherwise the rules in effect at the time of the request apply;
- Clarify that Employer-at-Injury Program benefits are available for "own motion" claim openings under ORS 656.278;
- Extend benefits to include a "skills building," class or course taken to enhance an existing skill or develop a new skill;
- Allow the insurer to accept updated restrictions and releases from a medical service provider treating the worker on a referral basis, with the exception of a regular work release;
- Do not require payroll records to show hours worked each day unless the worker has hourly restrictions;
- Provide that if the insurer or the Workers' Compensation Division disallows wage subsidy reimbursement for part of a payroll period, and payroll records do not show individual dates and hours worked, the gross wages will be divided by the number of days in the payroll period, and the prorated value of each day will be multiplied by the number of eligible days to determine the reimbursement amount for the payroll period – currently all reimbursement may be disallowed;
- Provide for the compilation of up to 66 days of wage subsidy during a 24-month period, due to gaps in transitional work;
- Disallow reimbursement for any day during which the worker exceeds his or her injury-caused limitations — currently this terminates Employer-at-Injury Program benefits; however, if an employer uses a time clock, up to 30 minutes per day will be allowed for the worker to get to and from the time clock and the worksite without exceeding hourly restrictions;
- Allow the insurer or employer to get clarification about the medical worker's release any time prior to submitting the reimbursement request;
- Increase the maximum reimbursement from \$750 to \$1,000 for tuition, books, and fees for a class or course of instruction; provide that accredited on-line or accredited self-study courses qualify for reimbursement; and
- Allow reimbursement if the employer in good faith paid for the costs of a class or course after the worker agreed to take part in the training and then refused to attend.

The agency proposes to amend OAR 436-110, "Preferred Worker Program." These proposed rules:

- Increase access to Preferred Worker Program benefits by allowing the employer to injury to request reemployment assistance for modified regular employment or a new job offered to its worker – up to \$25,000 for a worksite modification, up to six months of wage subsidy, and obtained employment purchases;
- Redefine "hire date" such that requests for reemployment assistance received more than 30 days after the hire date can be processed

NOTICES OF PROPOSED RULEMAKING

– the hire date is 12:01 AM the day following the request if the request is sent to the division more than 30 days after the start-work date;

- Delete the requirement that workers submit requests for premium exemption and wage subsidy within 90 days of the hire date and clarify how the effective dates will be determined.
- Clarify that Preferred Worker Program benefits are available for “own motion” claim openings under ORS 656.278;
- Provide that if the worker is not eligible under the most recent disabling claim or claim opening, eligibility may be based on the most recent disabling claim closure where injury-caused permanent restrictions prevented the worker from return to regular employment; and
- Provide that worksite modification may also include the means to protect modifications purchased by the Preferred Worker Program in an amount not to exceed \$2,500.

The agency proposes to amend OAR 436-120, “Vocational Assistance to Injured Workers.” These proposed rules:

- Combine vocational evaluation with eligibility evaluation for vocational assistance, thus shortening the vocational preparation time by up to 45 days;
- Require that if the insurer does not approve a return-to-work plan within 90 days of determining the worker is entitled to a training plan, or within 45 days of determining the worker is entitled to a direct employment plan, the insurer must schedule a conference with the Workers’ Compensation Division, Rehabilitation Review Unit. The insurer or worker may also request a conference when any other delays in the vocational rehabilitation process occur;
- Clarify the process for calculating the adjusted weekly wage when the worker held multiple jobs at the time of injury or aggravation, or held one or more jobs in addition to receiving unemployment insurance benefits;
- Clarify that extraordinary circumstances, for the purpose of determining attorney fees, are not established by merely exceeding eight professional hours or exceeding a benefit to the worker of \$6000; This proposed rule change is consistent with changes to OAR 436-001-0265, proposed March 9, 2005 (see above), and to OAR 436-010-0008, proposed January 14, 2005.
- Require that if the employer at injury has activated Preferred Worker benefits, the insurer must send the worker notice of “deferral of vocational assistance eligibility determination,” to inform the worker that the insurer will not complete the vocational eligibility process;
- Provide that modified or new employment that results from an employer activated use of the preferred worker program, under OAR 436-110, will not be considered “suitable” until: (a) one year from the date of the premium exemption if there are no worksite modifications, or (b) eighteen months from the date the division approves a worksite modification contract – with two exceptions: 1) the worker is terminated for cause; 2) the worker voluntarily resigns for a reason unrelated to the work injury; and
- Require that the notice of eligibility also include a notice of entitlement that informs the worker which type of assistance will be provided, direct employment or training.

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 at 503-947-7627 or fax 503-947-7630.

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

Rules Coordinator: Fred Bruyns
Address: Department of Consumer and Business Services, Workers’ Compensation Division, PO Box 14480, Salem, OR 97309-0405; 350 Winter St. NE, Salem, OR 97301-3879
Telephone: (503) 947-7717

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

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|--------------|--------------------|--|
| Date: | Time: | Location: |
| 4-19-05 | 10:30 a.m.–12 p.m. | 500 Summer St. NE Rm. 137C Salem, OR |

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-141-0000, 410-141-0060, 410-141-0070, 410-141-0080, 410-141-0110, 410-141-0120, 410-141-0140, 410-141-0160, 410-141-0180, 410-141-0200, 410-141-0220, 410-141-0280, 410-141-0300, 410-141-0320, 410-141-0340, 410-141-0400, 410-141-0405, 410-141-0420, 410-141-0440, 410-141-0480, 410-141-0520

Last Date for Comment: 4-19-05, 12 p.m.

Summary: The Oregon Health Plan (OHP) administrative rules govern Office of Medical Assistance Programs’ (OMAP) payments for products and services provided to certain clients. OMAP will amend a variety of rules in this program to incorporate and define the term Physician Care Organization (PCO), that references certain contracted managed care entities. OMAP will further amend 410-141-0120 to explain PCO liability, 410-141-0140 to explain Emergency, Urgent Care and Post Stabilization services and 410-141-0000 to add the definition for Covered Services.

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

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

Telephone: (503) 945-6927

| | | |
|--------------|--------------------|--|
| Date: | Time: | Location: |
| 4-19-05 | 10:30 a.m.–12 p.m. | 500 Summer St. NE Rm. 137C Salem, OR |

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Adoptions: 410-147-0365

Last Date for Comment: 4-19-05, 12 p.m.

Summary: The Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) program rules govern Office of Medical Assistance Programs’ (OMAP) payments for products and services provided to clients. Having temporarily adopted OAR 410-147-0365 in March 2005, OMAP will permanently adopt the rule to allow OMAP to reimburse qualified RHCs, located in frontier and remote rural counties, at 100% of reasonable costs associated uniquely to obstetrical (OB) care under an OB Prospective Payment System (PPS) rate.

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

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

Telephone: (503) 945-6927

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-121-0157
Proposed Repeals: 410-121-0157(T)
Last Date for Comment: 4-19-05, 12 p.m.

Summary: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs (OMAP) payments for serv-

NOTICES OF PROPOSED RULEMAKING

ices provided to clients. OMAP temporarily amended rule 410-121-0157 to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. Updates included information from CMS Release #135, dated December 10, 2004. 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

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

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|--------------|--------------|-------------------------------------|
| Date: | Time: | Location: |
| 4-22-05 | 9 a.m. | 500 Summer St. Rm. 137d Salem |

Hearing Officer: Lynda Dyer

Stat. Auth.: ORS 410.070 & 124.050 - 124.095

Stats. Implemented: ORS 410.040, 410.070 & 411.116

Proposed Adoptions: 411-020-0060, 411-020-0070, 411-020-0080, 411-020-0090, 411-020-0100, 411-020-0110, 411-020-0130

Proposed Amendments: 411-020-0000, 411-020-0002, 411-020-0010, 411-020-0015, 411-020-0020, 411-020-0030, 411-020-0040

Proposed Ren. & Amends: 411-020-0050 to 411-020-0120

Last Date for Comment: 4-22-05

Summary: The overall changes clarify specific definitions and steps in Chapter 411, Division 020, the Adult Protective Service process. Specifically:

- 411-020-0000 updates language to reflect Department of Human Services rather than Department of Human resources and to use 'people first' language. It also clarifies the scope of services to include current practice and specifies the availability of services. Statutory reference and administrative rule reference is included for every type (facility and community) of protective service complaints. This rule also specifies the intervention model used in APS activities as a cooperative and social service model.

- 411-020-0002 Adds definitions of certain terms to reflect best practice standards. These include "APS Risk Management," "community based care facility," "disability," "evidence," "inconclusive," "informed choice," "older adult," "relevant," "risk assessment," "self-determination," "serious risk of harm," "substantiated," "undue influence," and "unsubstantiated."

- 411-020-0010 updates statutory cites.

- 411-020-0015 clarifies that eligibility for APS services is not based on income.

- 411-020-0020 clarifies responsibilities of mandatory reporters of elder abuse and includes procedures for notification of the complainant when the investigation has been concluded.

- 411-020-0030 is expanded to include specific coverage of protected health information as confidential material.

- 411-020-0040 provides a general overview of the services provided in Adult Protective Services. Specific services are described in detail in the following sections.

- 411-020-0060 details the process of screening referrals for protective services.

- 411-020-0070 describes the process of consultation and when it is appropriate as an alternative to assessment or investigation.

- 411-020-0080 describes the triage process of determining required response times for APS referrals.

- 411-020-0090 describes the components of an assessment completed with a reported victim needing protective services.

- 411-020-0100 details the steps required in the process of investigating an APS complaint.

- 411-020-0110 describes the process of providing appropriate intervention for an APS client at risk of harm.

- 411-020-0120 details the required steps in documenting an APS investigation for both community and facility cases.

- 411-020-0130 describes the components of APS Risk Management as a way of continuing to monitor and intervene in APS cases. **Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Lynda Dyer

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

Telephone: (503) 945-6398

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

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 4-19-05 | 9 a.m. | 355 Capitol St. NE Dept. of Transportation Bldg. Rm. 122 Salem, OR |

Hearing Officer: Liz Woods

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.500, 822.505, 822.510, 822.515, 822.525 & 822.530

Stats. Implemented: ORS 822.500, 822.505, 822.510 & 822.515 - 822.530

Proposed Adoptions: 735-160-0011, 735-160-0012, 735-160-0013, 735-160-0075, 735-160-0093, 735-160-0115, 735-160-0125

Proposed Amendments: 735-160-0005, 735-160-0010, 735-160-0015, 735-160-0020, 735-160-0030, 735-160-0035, 735-160-0040, 735-160-0050, 735-160-0080, 735-160-0085, 735-160-0095, 735-160-0100, 735-160-0110, 735-160-0130

Proposed Repeals: 735-160-0000, 735-160-0055, 735-160-0090, 735-160-0120

Last Date for Comment: 4-21-05

Summary: These rules outline the requirements and qualifications for commercial driver training school operators and driver training instructors and the business requirements for commercial driver training schools. Chapter 735, Division 160 rules have not been revised in over 10 years. These rules are being updated to: conform to changes in Oregon law, such as graduated licensing requirements for teen drivers; to enhance qualification requirements for operators and instructors; and to enhance instruction requirements for student drivers. The rules are also being amended to enhance violation provisions to prevent fraudulent activity and to clarify the imposition of sanctions for violation of the laws and administrative rules relating to commercial driver training schools.

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

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.090, 807.240, 807.270, 807.340, 807.350, 807.710 & 809.419

Stats. Implemented: ORS 807.070, 807.090, 807.240, 807.250, 807.270, 807.340, 807.350, 807.370, 807.710, 809.419, 813.500 & 813.510

Proposed Amendments: 735-062-0073, 735-064-0040, 735-074-0080, 735-074-0160, 735-074-0170, 735-074-0180

Last Date for Comment: 4-21-05

Summary: The rules in OAR Chapter 735 Division 74 outline when DMV may require a person to provide additional medical information regarding the person's eligibility for driving privileges, the ways DMV may respond to reports of medical concerns and when a person may need to be cleared medically by the State Health Officer. Throughout these rules, it is proposed that references to the "Cer-

NOTICES OF PROPOSED RULEMAKING

tificate of Medical Eligibility” form be amended to “medical report” form when DMV is requesting that a person submit medical information and to “Certificate of Eligibility” when the State Health Officer issues a recommendation. This is consistent with ORS 807.090. A definition for “medical report” form is added to OAR 735-074-0080.

It is also proposed that the reference to the “Certificate of Medical Eligibility” form be amended to “medical report” form in OAR 735-062-0073 and 735-064-0040. Consistent with a legislative amendment to ORS 807.090, OAR 735-064-0040 is also being amended to change the term “Assistant Director for Health” to “State Health Officer” and to clarify the responsibility of the State Health Officer. OAR 735-062-0073 also has a couple of proposed amendments for clarity.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

Stat. Auth.: ORS 184.616, 184.619 & 802.010; Other Auth.: 49 CFR Part 1572

Stats. Implemented: ORS 807.170, 807.350, 807.370 & 49 USC §5103a

Proposed Amendments: 735-062-0190

Last Date for Comment: 4-21-05

Summary: This rule was established to comply with federal law, specifically 49 USC 5103a (Section 1012 of the USA Patriot Act of 2003) and the Federal Motor Carrier Safety Administration (FMCSA) and the Transportation Security Administration (TSA) regulations implementing this law. The federal law specifies that a hazardous materials endorsement for a commercial driver license (CDL) cannot be issued unless the driver obtains a security clearance from the TSA. DMV is proposing an amendment to the rule before the affected portion of the rule becomes effective. People renewing or transferring a CDL with a hazardous materials endorsement are subject to the requirements beginning on May 31, 2005. After gaining clarification on the federal requirements, DMV is proposing to amend the requirements for applying for an Oregon hazardous materials endorsement if the applicant has a CDL with hazardous materials endorsement issued by another state. DMV will not transfer a hazardous materials endorsement from another state but will require an applicant for an Oregon endorsement to pass all required tests, including a TSA security check, at the time of issuance. Consistent with the requirements for all other applicants, the person must then obtain a TSA security check every four years. DMV proposes to remove all references to specific dates and make the rule amendments effective May 31, 2005.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

Department of Veterans' Affairs Chapter 274

Stat. Auth.: ORS 183, 279.051, 279.712, 406, 407 & 408; Other Auth.: Art. XI-A of the OR Const.

Stats. Implemented: ORS 183, 279.051, 279.712, 406, 407 & 408

Proposed Amendments: 274-005-0040, 274-020-0200, 274-020-0387, 274-020-0388, 274-020-0411, 274-020-0440, 274-021-0005, 274-028-0005, 274-028-0035, 274-040-0025, 274-045-0001, 274-045-0150, 274-045-0190, 274-045-0220, 274-045-0411, 274-045-0471

Last Date for Comment: 4-21-05

Summary: These rules have now been amended to eliminate the use of “and/or” in the text of the Department’s administrative rules. In a memo dated November 4, 2004, the Department of Justice, General Counsel Division suggested this change to eliminate the possibility of incorrect interpretation of the rules. The remaining amendments are for housekeeping purposes.

Note: To obtain a copy of the text for the proposed administrative rules, contact ODVA’s Rules Coordination Unit at 503-373-2141.

Rules Coordinator: Herbert D. Riley

Address: Department of Veterans’ Affairs, 700 Summer St. NE, Salem, OR 97301-1285

Telephone: (503) 373-2055

Stat. Auth.: ORS 406.030, 407.115, 407.135, 407.145, 407.275, 407.325, 407.327, 407.375 & 407.377

Stats. Implemented: ORS 407.135, 407.145, 407.275, 407.325, 407.327, 407.375 & 407.377

Proposed Amendments: 274-020-0341, 274-021-0005, 274-028-0010, 274-045-0070

Last Date for Comment: 4-21-05

Summary: These rules have now been amended to eliminate citing the specific interest rates and effective dates in the OAR text while adding the text that describes the factors which the Director may consider in prescribing interest rates for the Department’s Home Loan Programs.

These amendments will benefit eligible veterans by expediting the process of prescribing interest rates in the fluctuating market and also eliminate the Department’s cost of sending notification of each change to the people on the OAR mailing list. The Department will continue to publish the interest rates and respective effective dates in the agency’s Tables and Codes Manual, which is available for viewing by the public during regular business hours.

Rules Coordinator: Herbert D. Riley

Address: Department of Veterans’ Affairs, 700 Summer St. NE, Salem, OR 97301-1285

Telephone: (503) 373-2055

Employment Department Chapter 471

Date:
4-18-05

Time:
10 a.m.

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

Hearing Officer: Richard Luthé

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.665 & 657

Proposed Amendments: Rules in 471-010

Last Date for Comment: 4-18-05, 5 p.m.

Summary: The Employment Department is proposing to amend:

Rules in OAR Chapter 471-010 to change definitions & to make the final record of Unemployment Insurance hearings non-confidential.

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

Rules Coordinator: Richard L. Luthé

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

Telephone: (503) 947-1724

Date:
4-18-05

Time:
11 a.m.

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

Hearing Officer: Richard Luthé

Stat. Auth.: ORS 657.610 & 657

Stats. Implemented: ORS 657.155, 657.266 & 657.267

Proposed Amendments: Rules in 471-030

Last Date for Comment: 4-18-05, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: The Employment Department is proposing to amend rules in OAR Chapter 471-030 to:

Change the reference to "weeks" in 471-030-0048 to "hours";

Change the requirement of needing a signature in order to cancel a claim in 471-030-0095; and

Update the requirements of serving on a jury as it relates to a claim in 471-030-0120.

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

Rules Coordinator: Richard L. Luthé

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

Telephone: (503) 947-1724

| Date: | Time: | Location: |
|---------|--------|--|
| 4-18-05 | 1 p.m. | 875 Union NE Employment Dept. Auditorium Salem, OR 97311 |

Hearing Officer: Richard Luthé

Stat. Auth.: ORS 657.610 & 657

Stats. Implemented: ORS 657.045

Proposed Amendments: Rules in 471-031

Last Date for Comment: 4-18-05, 5 p.m.

Summary: The Employment Department is proposing to amend rules in OAR Chapter 471-031 to: Clarify the definition of "agricultural labor."

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

Rules Coordinator: Richard L. Luthé

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

Telephone: (503) 947-1724

| Date: | Time: | Location: |
|---------|--------|--|
| 4-18-05 | 2 p.m. | 875 Union NE Employment Dept. Auditorium Salem, OR 97311 |

Hearing Officer: Richard Luthé

Stat. Auth.: ORS 657.610 & 657

Stats. Implemented: ORS 657.280 & 657

Proposed Amendments: Rules in 471-040

Last Date for Comment: 4-18-05, 5 p.m.

Summary: The Employment Department is proposing to amend rules in OAR Chapter 471-040 to: Clarify the procedure for requesting a hearing.

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

Rules Coordinator: Richard L. Luthé

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

Telephone: (503) 947-1724

| Date: | Time: | Location: |
|---------|--------|--|
| 4-18-05 | 3 p.m. | 875 Union NE Employment Dept. Auditorium Salem, OR 97311 |

Hearing Officer: Richard Luthé

Stat. Auth.: ORS 657.610 & 657.158

Stats. Implemented: ORS 657.158

Proposed Adoptions: 471-020-0025

Last Date for Comment: 4-18-05, 5 p.m.

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

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

Rules Coordinator: Richard L. Luthé

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

Telephone: (503) 947-1724

Employment Department, Child Care Division Chapter 414

| Date: | Time: | Location: |
|---------|--------|--|
| 4-18-05 | 9 a.m. | 875 Union NE Employment Dept. Auditorium Salem, OR 97311 |

Hearing Officer: Richard Luthé

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657A.030

Proposed Amendments: 414-205-0170

Last Date for Comment: 4-18-05, 5 p.m.

Summary: OAR 414-205-0170 to clarify that an individual enrolled in the Criminal History Registry may be removed or suspended from the Registry in certain circumstances, and to reflect the role of law enforcement agencies' role in child protective services investigations.

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

Rules Coordinator: Richard L. Luthé

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

Telephone: (503) 947-1724

Landscape Architect Board Chapter 804

| Date: | Time: | Location: |
|---------|---------|--|
| 5-13-05 | 10 a.m. | 1193 Royvonne Ave. SE, #19 Conference Rm. Sunset Center South Salem, OR 97302 |

Hearing Officer: Andrew Leisinger

Stat. Auth.: ORS 671.415, 670.310, 182.462 & 671.365

Stats. Implemented: ORS 182.462

Proposed Amendments: 804-001-0002, 804-040-0000

Last Date for Comment: 5-2-05

Summary: The amendment of OAR 804-001-0002 allows the Oregon State Board of Landscape Architect to adopt a budget for the 2005-2007 biennium. The expenditure limit for the biennium is \$245,650. A copy of the proposed budget and/or rule amendment is available by contacting the agency Rules Coordinator.

The amendment of OAR 804-040-0000 increases the annual fee for Landscape Architect registration from \$225.00 to \$250.00.

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

Rules Coordinator: Susanna R. Knight

Address: Landscape Architect Board, 1193 Royvonne Ave SE, Suite 19, Salem, OR 97302

Telephone: (503) 589-0093

Oregon Department of Aviation Chapter 738

Stat. Auth.: ORS 835.035 & 836.085

Stats. Implemented: ORS 836.085 & 836.095

Proposed Amendments: 738-020-0025

Last Date for Comment: 4-21-05

Summary: A rule amendment is proposed to delete subsection (5) of OAR 738-020-0025. Oregon Law (ORS 836.085) allows the Department to charge up to \$300.00 (in addition to a nonrefundable fee of \$75) to pay for the cost of inspecting and approving an airport site. Subsection (5) requires calculation of partial costs for airport site investigations to allow for refunds from the \$300 charge. It requires the inspector to calculate certain actual "allowable costs" for per diem, lodging, and motor pool charges. If the total was less than

NOTICES OF PROPOSED RULEMAKING

\$300, the remainder would be refunded to the applicant. The Department did not include staff labor cost, or travel by other than state motor pool vehicles, as part of the allowable costs. The staff has studied past airport site inspections and finds that if labor and other travel costs were included (as is permitted by law but not by the rule), the costs would generally exceed \$300. Rather than require individual calculations, the staff proposes to charge the full \$300 for each inspection. The result would be a standard \$300 fee for all site investigations.

Rules Coordinator: John Wilson
Address: Oregon Department of Aviation, 3040 25th St. SE, Salem, OR 97302-1125
Telephone: (503) 378-4880, ext. 228

.....
Oregon Public Employees Retirement System
Chapter 459

| Date: | Time: | Location: |
|---------|--------|---|
| 4-26-05 | 2 p.m. | 11410 SW 68th Pkwy. Boardroom PERS Headquarters Tigard, OR |

Hearing Officer: David K. Martin
Stat. Auth.: ORS 238.650 & 238.465(3)
Stats. Implemented: ORS 238.465 & OL 2003, Ch. 276, Sec. 2
Proposed Amendments: 459-045-0030
Last Date for Comment: 5-3-05

Summary: Clarifies that Alternate Payees are entitled to benefits based on a member's eligibility rather than a member's actions or choices. The rule modifications are necessary because the existing rule provisions are unclear and contradictory and are more restrictive than the statute provides.

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

Rules Coordinator: David K. Martin
Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281-3700
Telephone: (503) 603-7713

.....
Oregon State Treasury
Chapter 170

Stat. Auth.: ORS 287
Stats. Implemented: ORS 288 & 293
Proposed Amendments: 170-061-0015
Last Date for Comment: 4-21-05

Summary: Defines fees charged by the Debt Management Division of the Oregon State Treasury as staff to the Municipal Debt Advisory Commission for services rendered to local government units. This updates various provisions primarily fees to be charged for the review and approval of an executed interest rate exchange agreement.

Rules Coordinator: Sally Furze
Address: Oregon State Treasury, 350 Winter St. NE, Suite 100, Salem, OR 97301
Telephone: (503) 378-4633

.....
Oregon University System
Chapter 580

| Date: | Time: | Location: |
|---------|------------|---|
| 5-10-05 | 10-11 a.m. | 1431 Johnson Ln. Rm. 358 SCH Eugene, OR |

Hearing Officer: Donna Niegel, Mgr. Central Budget Op.
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Proposed Amendments: 580-040-0040
Last Date for Comment: 5-11-05
Summary: To establish tuition and fees for the 2005-06 Academic Year, including room and board rates.

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

Rules Coordinator: Marcia M. Stuart
Address: Oregon University System, PO Box 3175, Eugene, OR 97403-0175
Telephone: (541) 346-5795

.....
Oregon University System,
Eastern Oregon University
Chapter 579

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Proposed Amendments: 579-020-0006
Last Date for Comment: 4-21-05
Summary: Amend fees charged to students for special uses of facilities, services or supplies at Eastern Oregon University.

Rules Coordinator: Lara Moore
Address: Oregon University System, Eastern Oregon University, One University Blvd., Inlow Hall 114, La Grande, OR 97850
Telephone: (541) 962-3773

.....
Oregon University System,
University of Oregon
Chapter 571

| Date: | Time: | Location: |
|---------|--------|---|
| 4-22-05 | 3 p.m. | Alesa & Coquille Rm. EMU University of Oregon Eugene, OR |

Hearing Officer: Connie Tapp, Office of the General Counsel
Stat. Auth.: ORS 352.004; Other Auth.: ORS 351.010 & 351.060
Stats. Implemented: ORS 352.004
Proposed Adoptions: 571-023-0000, 571-023-0100, 571-023-0105, 571-023-0110, 571-023-0115, 571-023-0120
Proposed Amendments: 571-023-0005, 571-023-0025
Proposed Repeals: 571-023-0010, 571-023-0015, 571-023-0020, 571-023-0030, 571-023-0035, 571-023-0040
Last Date for Comment: 4-25-05, 12 p.m.

Summary: Revise and update student medical leave policy because it is outdated and does not represent best practices for responding to students' need for medical leave to deal with serious health conditions.

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

Rules Coordinator: Connie Tapp
Address: Oregon University System, University of Oregon, 1226 University of Oregon, Eugene, OR 97403
Telephone: (541) 346-3082

.....
Oregon Watershed Enhancement Board
Chapter 695

| Date: | Time: | Location: |
|---------|------------|--|
| 4-15-05 | 10:30 a.m. | State Lands Bldg. Land Board Rm. Salem, OR |

Hearing Officer: Wendy Hudson
Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Proposed Adoptions: 695-035-0015
Proposed Amendments: Rules in 695-035
Last Date for Comment: 4-15-05
Summary: OWEB seeks public comment on proposed changes to the Small Grant Program OARs. Established in 2002, the Program provides funding through a competitive grant process for watershed restoration projects of \$10,000 or less. The revised rules address in part: 1) Small Grant Team administration of the program, and 2) eligible and ineligible projects.

NOTICES OF PROPOSED RULEMAKING

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

Rules Coordinator: Bonnie Ashford
Address: Oregon Watershed Enhancement Board, 775 Summer St. NE, Suite 360, Salem, OR 97301-1290
Telephone: (503) 986-0181

Oregon Youth Authority
Chapter 416

| Date: | Time: | Location: |
|---------|---------|--|
| 4-15-05 | 10 a.m. | 530 Center St. Suite 200 Salem, OR 97301 |

Hearing Officer: Kimberly Walker
Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 181.010, 181.066, 181.511-580, 420A.010 & 420A.020
Proposed Amendments: 416-800-0000, 416-800-0010, 416-800-0050
Last Date for Comment: 4-15-05

Summary: OAR 416-800-0000 will be amended to delete "reduce or" since it is the intent of the OYA to ensure no offender in OYA custody is exploited or abused. OAR 416-800-0010 will be amended to reformat definitions and delete the term "youth offender." OAR 416-800-0050 will be amended to add language that OYA staff are subject to criminal history checks at the time of promotion or lateral transfers, to delete the term "youth offender," and to correct grammatical errors.

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

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

Public Utility Commission
Chapter 860

| Date: | Time: | Location: |
|--------|---------|---|
| 6-8-05 | 11 a.m. | 550 Capitol St. NE Public Utility Commission Main Hearing Rm. - 1st Flr. Salem, OR |

Hearing Officer: Samuel J. Petrillo
Stat. Auth.: ORS 183, 756 & 759
Stats. Implemented: ORS 756.040, 759.030, 759.035, 759.045, 759.050, 759.240 & 759.450
Proposed Amendments: 860-023-0055, 860-032-0012, 860-034-0390
Last Date for Comment: 6-8-05

Summary: The proposed telecommunications service quality rules establish retail service quality standards that apply to telecommunications utilities, as well as competitive telecommunications providers.

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

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

| Date: | Time: | Location: |
|--------|--------|---|
| 6-8-05 | 9 a.m. | 550 Capitol St. NE Public Utility Commission Main Hearing Rm. - 1st Flr. Salem, OR |

Hearing Officer: Samuel J. Petrillo
Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 756.040, 757.020, 759.005, 759.020, 759.030 - 759.050 & 759.450

Proposed Adoptions: 860-023-0054
Proposed Amendments: 860-023-0000, 860-023-0001, 860-023-0005

Last Date for Comment: 6-8-05
Summary: This rulemaking basically establishes default service quality rules for intrastate toll carriers that have not specified levels of service to their customers in accordance with ORS 759.020(6) which states: "Any provider of intrastate toll service must inform customers of the service level furnished by that provider, according to rules of the commission. The commission, by rule shall determine the level of intrastate toll service that is standard. Any provider of intrastate toll service must identify the service level that provider plans to furnish in an annual report to the commission. The commission shall revoke the certification of any provider that does not consistently furnish the service level identified in the provider's annual report."

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

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

Racing Commission
Chapter 462

| Date: | Time: | Location: |
|---------|---------|--|
| 5-19-05 | 10 a.m. | 800 NE Oregon St. Rm. 140 Portland, OR |

Hearing Officer: Stephen S. Walters, Commissioners
Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270(3)
Proposed Amendments: 462-220-0040
Last Date for Comment: 5-19-05

Summary: Amends the rule by changing the manner in which percentages of total receipts are calculated and providing three different payment options from which operators of Multi-jurisdictional Wagering Hubs may choose to make payment to the Oregon Racing Commission per ORS 462.725(3)(b).

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

Rules Coordinator: Carol N. Morgan
Address: Oregon Racing Commission, 800 NE Oregon St., Suite 310, Portland, OR 97232
Telephone: (503) 731-4052

Real Estate Agency
Chapter 863

Stat. Auth.: ORS 185.335, 696.265, 696.385, 696.425, 696.603 & 696.820

Stats. Implemented: ORS 696.020, 696.022, 696.028, 696.241, 696.255, 696.265, 696.280, 696.301, 696.361, 696.805, 696.810, 696.815 & 696.606

Proposed Adoptions: 863-015-0061, 863-015-0062, 863-015-0076

Proposed Amendments: 863-010-0610, 863-010-0640, 863-015-0015, 863-015-0020, 863-015-0030, 863-015-0035, 863-015-0045, 863-015-0050, 863-015-0060, 863-015-0065, 863-015-0075, 863-015-0080, 863-015-0125, 863-015-0175, 863-015-0195, 863-015-0215, 863-015-0260, 863-025-0015, 863-025-0020, 863-025-0025, 863-025-0030, 863-025-0035, 863-025-0040, 863-025-0045, 863-025-0050, 863-025-0055, 863-025-0065, 863-025-0070
Last Date for Comment: 4-30-05

Summary: The proposed rule changes include three new rules: defining affiliated and subsidiary organizations (OAR 863-015-0062), requiring that a current mailing address be maintained at the Agency (OAR 863-015-0062), and allowing facsimile signatures on licensing documents. OAR 863-010-0061 and OAR 863-010-0640

NOTICES OF PROPOSED RULEMAKING

and OAR 863-015-0015 through OAR 863-015-0080 were amended with such minor "housekeeping" changes as clarifying license status effective dates and fixing inconsistencies within those rules. These amendments correct errors, duplication, references, and unnecessary verbiage, without significantly altering the meaning of the rules. The proposed rule revisions also include a change to OAR 863-015-0125 (Advertising) to streamline that rule. OAR 863-015-0175 (Report of Litigation Involving Licensees) was amended to include other administrative and Oregon state Bar proceedings in the reporting requirements. OAR 863-015-0195 (Licensed Personal Assistants) was amended as provided by 2001's Senate Bill 446. OAR 863-015-0215 (Disclosure Pamphlet) was amended to conform to statutory requirements. OAR 863-015-0260 (Records Retention) was amended changing the requirement of maintaining records at the broker's office from two years to six years. However, exception language is provided.

The proposed Property Management rule changes, 863-025-0015 to 863-025-0070, were amended to eliminate redundant and unnecessary regulations and incorporate more business-friendly changes, in accordance with the Governor's directive to eliminate unnecessary regulation and to streamline the regulatory process. The Real Estate Commissioner consulted a property management task force consisting of persons representing the residential and commercial property management industry throughout the state to obtain public views that assisted the agency in drafting the Property Management proposed rules dealing with such issues as owner and tenant agreements, property management client trust account requirements, and other financial record keeping requirements.

Rules Coordinator: Brian DeMarco
Address: Real Estate Agency, 1177 Center St. NE, Salem, OR 97301-2505
Telephone: (503) 378-4170, ext. 237

**Secretary of State,
 Archives Division
 Chapter 166**

| Date: | Time: | Location: |
|--------------|--------------------------|----------------------------|
| 4-25-05 | 9:30 a.m. | Archives Bldg. |
| | (counties & spec. dist.) | 800 Summer St. NE Salem |
| 4-25-05 | 10:30 a.m. | Archives Bldg. |
| | (cities) | 800 Summer St. NE Salem |

Hearing Officer: Mary Beth Herkert
Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895
Proposed Amendments: 166-150-0005, 166-150-0110, 166-200-0010, 166-200-0050
Last Date for Comment: 4-25-05
Summary: Deletes Administrative, General, Policy and Historical and Ephemeral correspondence categories currently found in the County General Schedule (OAR 166-150-0005) and replaces them with Correspondence. Deletes General, Program, Policy and Historical and Ephemeral correspondence categories currently found in

the City General Schedule (OAR 166-200-0010) and replaces them with Correspondence. Also deletes Financial Correspondence found in both the County General Schedule (OAR 166-150-0110) and the City General Schedule (OAR 166-200-0050).

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

Rules Coordinator: Julie Yamaka
Address: Secretary of State, Archives Division, 800 Summer St. NE, Salem, OR 97310
Telephone: (503) 373-0701, ext. 240

**Secretary of State,
 Business Services Division
 Chapter 167**

| Date: | Time: | Location: |
|--------------|--------------|--|
| 4-20-05 | 1:30 p.m. | Corporations Division Conference Rm. Salem, OR |

Hearing Officer: Rob Rickard
Stat. Auth.: ORS 279A.065 & 279A.070
Stats. Implemented: ORS 279A.065 & 279A.070
Proposed Adoptions: 167-001-0007, 167-001-0065, 167-001-0081, 167-001-0085, 167-001-0300, 167-001-0360, 167-001-0600, 167-001-0605, 167-001-0620, 167-001-0625, 167-001-0630, 167-001-0635
Proposed Amendments: 167-001-0005, 167-001-0010, 167-001-0020, 167-001-0030, 167-001-0070
Last Date for Comment: 4-27-05
Summary: The current procurement rules will be repealed by HB 2341, effective March 1, 2005. Temporary rules have been filed to allow current procurement processes to continue. These permanent rules being considered in this hearing will replace those temporary rules.

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

Rules Coordinator: Robin Rickard
Address: Secretary of State, Business Services Division, 255 Capitol St. NE, Suite 180, Salem, OR 97310
Telephone: (503) 986-2357

**Travel Information Council
 Chapter 733**

Stat. Auth.: ORS 377.700 - 377.840
Stats. Implemented: ORS 183.310 - 183.550
Proposed Amendments: Rules in 733-030
Last Date for Comment: 4-30-05
Summary: The Travel Information Council held a quarterly meeting on March 11, 2005. The Council proposed rule changes to allow logo signs located on the primary and secondary state highway system to display a maximum of six logo plaques per sign panel.
Rules Coordinator: Angela Willhite
Address: Travel Information Council, 229 Madrona Ave. SE, Salem, OR 97302
Telephone: (503) 378-4508

ADMINISTRATIVE RULES

Board of Accountancy Chapter 801

Adm. Order No.: BOA 2-2005

Filed with Sec. of State: 2-24-2005

Certified to be Effective: 3-1-05

Notice Publication Date: 2-1-05

Rules Amended: 801-001-0020, 801-001-0035

Subject: This rule is being modified to change the name of the Hearings Officer Panel as revised, and to change the effective date of professional standards to December 31, 2004.

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

801-001-0020

Hearing Panel Rules

The Oregon Board of Accountancy adopts by this reference the rules for *Office of Administrative Hearings Panel Rules* (OAR chapter 137), as promulgated by the Department of Justice.

Stat. Auth.: OL 1999 Ch. 849 Sec. 2-21

Stats. Implemented: ORS 673.185

Hist.: BOA 2-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 1-2002, f. 12-27-02, cert. ef. 1-1-03;

BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2005, f. 2-24-05 cert. ef. 3-1-05

801-001-0035

Professional Standards

The professional standards, interpretations, rulings and rules designated and adopted by the Board in OAR chapter 801 are those in effect as of December 31, 2004.

Stat. Auth: ORS 183.332 & 673.410

Stats Implemented: ORS 183.337, 673.410

Hist.: BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2005, f. 2-24-05 cert. ef. 3-1-05

Adm. Order No.: BOA 3-2005

Filed with Sec. of State: 2-24-2005

Certified to be Effective: 3-1-05

Notice Publication Date: 2-1-05

Rules Amended: 801-005-0010

Subject: Revised to correct citations to professional standards for federal audits.

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

801-005-0010

Definitions

As used in OAR 801, the following terms or abbreviations have the following meanings, unless otherwise defined therein:

(1) **AICPA:** American Institute of Certified Public Accountants.

(2) **Applicant:** a person applying for a certificate, license or permit to practice public accountancy.

(3) **Attest:** includes the following financial statement services:

(a) An audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS):

(b) A review of a financial statement to be performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS);

(c) An examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE); and

(d) An agreed-upon-procedures report on a financial statement to be performed in accordance with Statements on Standards for Attestation Engagements (SSAE).

(e) The statements on standards specified in this definition are those developed by the AICPA.

(4) **Business organization:** any form of business organization authorized by law, including but not limited to a proprietorship, partnership, corporation, limited liability company, limited liability partnership or professional corporation.

(5) **CPA or Certified Public Accountant:** a person who has a certificate of certified public accountant issued under ORS 673.040.

(6) **CPA Exam:** the Uniform Certified Public Accountant Examination.

(7) **CPE:** continuing professional education.

(8) **Candidate:** a person applying for the CPA Exam.

(9) **Certificate:** a certificate of certified public accountant issued under ORS 673.040.

(10) **Client:** a person who agrees with a licensee to receive any professional service from the licensee.

(11) **Commission:** a fee calculated as a percentage of the total value of the sale of a product or service that is paid or received in the form of money or other valuable consideration.

(12) **Compilation:** a professional service performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS) that is presenting, in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

(13) **Contingent fee:** a fee established for the performance of any professional service and directly or indirectly paid to a licensee pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. A fee is not contingent if the fee:

(a) Is fixed by courts or other public authorities; or

(b) In tax matters, is determined based on the results of judicial proceedings or the findings of governmental agencies.

(14) **Direct supervision:** a clear connection between the supervisor and the person being supervised in terms of planning, coordinating, guiding, inspecting, controlling and evaluating activities, and in discharging the employee being supervised.

(15) **Enterprise:** any person or entity, whether organized for profit or not, for which a licensee provides public accounting services.

(16) **Financial statements:** the presentation of financial data, including accompanying notes, that is derived from accounting records and intended to communicate an entity's economic resources or obligations or the changes therein, at a specific point in time, and/or the results of operations for a specific period of time, presented in accordance with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles. Financial presentations included in tax returns are not financial statements. Incidental financial data included in management advisory services reports to support recommendations to a client are not financial statements. The method of preparation (for example, manual or computer preparation) is not relevant to the definition of a financial statement.

(17) **Firm:** a business organization as defined in ORS 673.010 that is engaged in the practice of public accountancy and is required to be registered with the Board.

(18) **First time candidate:** a candidate for the CPA exam who is sitting for the exam for the first time in any state.

(19) **Generally Accepted Accounting Principles:** accounting principles or standards generally accepted in the United States, including but not limited to *Statements of Financial Accounting Standards* and interpretations thereof, as published by the Financial Accounting Standards Board, and *Statements of Governmental Accounting Standards* and interpretations thereof, as published by the Government Accounting Standards Board.

(20) **Generally Accepted Auditing Standards:** the *Generally Accepted Auditing Standards* adopted by the American Institute of Certified Public Accountants, together with interpretations thereof, as set forth in *Statements on Auditing Standards* issued by the AICPA, and for federal audits, the *Single Audit Act* and related U.S. Office of Management and Budget Circulars published by the Government Accountability Office.

(21) **Holding out as a CPA or PA:** to assume or use by oral or written communication the titles or designations "certified public accountant" or "public accountant" or the abbreviations "CPA" or "PA," or any number or other title, sign, card or device tending to indicate that the person holds a certificate or license and permit in good standing issued under the authority of ORS 673 as a certified public accountant or a public accountant.

(22) **Inactive status:** permit status that may be granted to a licensee who is not holding out as a CPA or PA and otherwise not engaged in the practice of public accountancy, if the license is not suspended, on probation or revoked.

(23) **In good standing:** the status of a holder of a permit, license or registration issued by any jurisdiction, that is not inactive, suspended, revoked, on probation or lapsed.

(24) **Jurisdiction:** the licensing authority for the practice of public accountancy in any state, U.S. Territory or foreign country.

(25) **License:**

(a) A certificate, permit or registration, or a license issued under ORS 673.100, or other authority enabling the holder thereof to practice public accountancy in this state; or

ADMINISTRATIVE RULES

(b) A certificate, permit, registration or other authorization issued by a jurisdiction outside this state enabling the holder thereof to practice public accountancy in that jurisdiction.

(26) **Licensee:** the holder of a license as defined in these rules.

(27) **Material participation:** participation that is regular, continuous and substantial.

(28) **Manager:** a manager of a limited liability company.

(29) **Member:** a member of a limited liability company.

(30) **NASBA:** National Association of State Boards of Accountancy.

(31) **Non-licensee owner:** a person who does not hold a certificate, license or permit as a certified public accountant or public accountant in Oregon or in any other jurisdiction.

(32) **PA or Public Accountant:** a person who is the holder of a license issued under ORS 673.100.

(33) **Peer Review:** a study, appraisal or review of one or more aspects of the public accountancy work of a holder of a permit under ORS 673.150 or of a registered business organization that performs attestation or compilation services. The peer review is conducted by a person or persons who are permitted under ORS 673.150 to practice public accountancy and who are independent of the permit holder or registered business organization being reviewed.

(34) **Permit:** a permit to practice public accountancy issued under ORS 673.150.

(35) **Practice of public accountancy:** performance of or any offer to perform one or more services for a client or potential client, by a licensee while holding out as a CPA or PA, of the professional services of accounting, tax, personal financial planning, litigation support services, and those professional services for which standards are promulgated, such as Statements of Financial Accounting Standards, Statements on Auditing Standards, Statements on Standards for Accounting and Review Services, Statements on Standards for Consulting Services, Statements of Governmental Accounting Standards, and Statements on Standards for Attestation Engagements, including the performance of such services while in the employ of another person.

(36) **Principal Place of Business:** the physical location, as identified by a licensee, where the licensee conducts substantial administrative or management activities. For purposes of "substantial equivalency" the physical location cannot be in the State of Oregon.

(37) **Professional:** arising out of or related to the specialized knowledge or skills associated with certified public accountants and public accountants.

(38) **Professional services:** any services performed or offered to be performed by a licensee for a client or potential client in the course of the practice of public accountancy.

(39) **Referral fee:** includes, but is not limited to, a rebate, preference, discount or any item of value, whether in the form of money or otherwise, given or received by a certified public accountant, public accountant or firm, to or from any third party, directly or indirectly, in exchange for the purchase of any product or service, unless made in the ordinary course of business.

(40) **Registration:** the authority issued under ORS 673.160 to a business organization to practice public accountancy in this state.

(41) **Returning candidate:** a person who has received grades for any section of the Uniform CPA exam in any state and who applies to sit for any part of the CPA exam in Oregon.

(42) **Single Audit Act:** the Single Audit Act with the Single Audit Act Amendments of 1996, as published by the United States Government Accountability Office, Office of Management and Budget.

(43) **Standards for Accounting and Review Services:** the *Statements on Standards for Accounting and Review Services* published by the AICPA.

(44) **Standards for board approved peer review programs:** the *Standards for Performing and Reporting on Peer Reviews* published by the AICPA.

(45) **Statements on Standards for Attestation Engagements:** the statements by that name issued by the AICPA.

(46) **State:** any state, territory or insular possession of the United States, and the District of Columbia.

(47) **Substantial equivalency:** a determination by the National Qualification Appraisal Service of the National Association of State Boards of Accountancy that:

(a) The education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are equivalent to or exceed the education, examination and experience requirements of the Uniform Accountancy Act; or

(b) An individual's education, examination and experience qualifications are equivalent to or exceed the education, examination and experience requirements of the Uniform Accountancy Act.

(48) **Supervisor licensee:** A certified public accountant or public accountant whose license is not revoked, suspended, on probation, lapsed or inactive, who qualifies under OAR 801-010-0065 as a supervisor for the purpose of verifying the experience requirement of an applicant for certification under OAR 801-010-0065 or the experience requirement of an applicant for a public accountant license under OAR 801-010-0100.

(49) **Uniform Accountancy Act (UAA):** A model bill and set of regulations designed by the AICPA and NASBA to provide a uniform approach to regulation of the accounting profession.

(50) **Valid:** Describes a certified public accountant certificate or permit, a public accountant license or permit, municipal roster authority or firm registration that is active and in good standing with the appropriate licensing authority.

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

Stat. Auth.: ORS 670.310

Stats. Implemented: ORS 670.310

Hist.: 1AB 2-1982, f. & ef. 10-15-86 AB 1-1989, f. & cert. ef. 1-25-89; AB 2-1990, f. & cert. ef. 4-9-90; AB 1-1992, f. & cert. ef. 2-18-92; AB 1-1993, f. 1-14-93, cert. ef. 1-15-93; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1994, f. & cert. ef. 11-10-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 3-1995, f. & cert. ef. 5-19-95; AB 4-1995, f. & cert. ef. 8-8-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 2-1996, f. & cert. ef. 9-25-96; AB 2-1997, f. & cert. ef. 3-10-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 3-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 2-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 3-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 3-2005, f. 2-24-05 cert. ef. 3-1-05

Board of Architect Examiners

Chapter 806

Adm. Order No.: BAE 1-2005

Filed with Sec. of State: 3-14-2005

Certified to be Effective: 7-1-05

Notice Publication Date: 1-1-05

Rules Amended: 806-001-0003

Subject: This rule is amended to adopt the Oregon State Board of Architect Examiners' 2005-2007 biennial budget; with an expenditure limit of \$647,750.

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

806-001-0003

Biennial Budget

Pursuant to the provisions of ORS 182.462, following a public hearing, the Board adopts by reference the Oregon State Board of Architect Examiners 2005-2007 Biennial Budget of \$647,750 covering the period July 1, 2005, through June 30, 2007. The Board Administrator will amend budgeted accounts as necessary, within the approved budget of \$647,750, for the effective operation of the Board. The Board will not exceed the approved budget amount without amending this rule, notifying holders of licenses, and holding a public hearing. Copies of the budget are available from the Board's office.

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

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 291 superseded by SB 546, 1997

Hist.: AE 1-1997(Temp), f. & cert. ef. 7-25-97; AE 3-1997, f. & cert. ef. 12-11-97; BAE2-1998, f. & cert. ef. 6-22-98; BAE 2-1999, f. & cert. ef. 5-25-99; BAE 2-2001, f. 6-6-01, cert. ef. 7-1-01; BAE 2-2003, f. 4-11-03 cert. ef. 7-1-03; BAE 1-2005, f. 3-14-05, cert. ef. 7-1-05

Board of Massage Therapists

Chapter 334

Adm. Order No.: BMT 1-2005

Filed with Sec. of State: 2-23-2005

Certified to be Effective: 2-23-05

Notice Publication Date: 12-1-04

Rules Amended: 334-010-0050

Subject: Re-write the continuing education rule to make it easier for Massage Therapists to obtain their continuing education.

Rules Coordinator: Michelle Sherman—(503) 365-8657

334-010-0050

Continuing Education

The intent of Continuing Education is to protect the public by maintaining and enhancing licensees' professional knowledge and skills relating to massage and bodywork practice.

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(1) Each licensee shall complete 25 hours of continuing education each renewal period. At renewal time, each licensee shall sign and submit a Board supplied CE form indicating they have completed 25 hours of continuing education. At least 12 hours must be contact hours defined as instruction involving other massage and bodywork practitioners. The remaining 13 hours may be contact hours or in areas as defined on Board supplied CE form.

(2) The continuing education requirement shall not apply to a licensee's first license renewal.

(3) Continuing education must be completed within the renewal period. Contact hours taken in excess of the total number required may only be carried over to the next subsequent renewal period.

(4) Continuing education records shall be maintained by each licensee for a minimum of five years.

(5) If the Board finds indications of fraud or falsification of records, investigative action shall be instituted. Findings may result in disciplinary action including revocation of the licensee's license.

(6) Failure to complete continuing education hours by the time of renewal may result in denial of a license. Licensee has 30 days from date of notification of non-compliance to come into compliance. Failure to be in compliance may result in suspension of the license to practice massage.

(7) Continuing education must be in areas related to the practice of massage or bodywork including theory, research, technique or business development.

Stat. Auth.: ORS 687.081, 687.121 & 687.122

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: BMT 1-1998(Temp), f. & cert. ef. 2-3-98 thru 7-31-98; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 2-2004(Temp), f. & cert. ef. 3-16-04 thru 9-7-04; Administrative correction, 9-28-04; BMT 3-2004(Temp), f. & cert. ef. 10-22-04 thru 4-19-05; BMT 1-2005, f. & cert. ef. 2-23-05

Board of Nursing Chapter 851

Adm. Order No.: BN 1-2005

Filed with Sec. of State: 2-17-2005

Certified to be Effective: 2-17-05

Notice Publication Date: 1-1-05

Rules Amended: 851-050-0002

Subject: These rules cover the standards and scope of practice for the Nurse Practitioner. This amendment would add the ACNM (American College of Nurse-Midwives) Division of Accreditation as an acceptable accrediting body for nurse practitioner (nurse-midwife) program accreditation.

Rules Coordinator: KC Cotton—(503) 731-4754

851-050-0002

Application for Initial Certification as a Nurse Practitioner

(1) An applicant for initial certification in Oregon as a nurse practitioner shall:

(a) Hold a current unencumbered registered nurse license in the State of Oregon; and

(b) Meet the following educational requirements:

(A) A Master's Degree in Nursing or a Doctorate in Nursing from a CCNE (Commission on Collegiate Nursing Education) or NLNAC (National League for Nursing Accreditation Commission) accredited graduate nursing program; and

(B) Satisfactory completion of a Nurse Practitioner Program that meets OAR 851-050-0001 requirements and is specific to the expanded specialty role/category for which application is made.

(C) Nurse practitioner programs completed after January 1, 2005 shall be formally affiliated within a CCNE, ACNM-DOA (American College of Nurse-Midwives Division of Accreditation), or NLNAC accredited graduate level program at the Masters or post-masters graduate level; or an equivalent non-U.S. graduate program as specified in OAR 851-050-0001(11); and

(c) Meet the practice requirement in OAR 851-050-0004.

(2) An applicant for initial certification in Oregon who has been certified in another state as an advanced practice nurse, and who meets all other requirements for certification, may be certified in Oregon if their program meets the standards of OAR 851-050-0001 and was completed within the following time frames:

(a) Prior to January 1, 1981, completion of a nursing educational program leading to licensure as a registered nurse and subsequent completion of a nurse practitioner program.

(b) As of January 1, 1981, a nurse obtaining Oregon certification shall have a minimum of a baccalaureate degree with a major in nursing and, in addition, satisfactory completion of an educational program in the nurse practitioner specialty area. Specialty preparation obtained within a baccalaureate nursing program does not meet this requirement.

(c) As of January 1, 1986, the minimum educational requirement for Oregon shall be a Masters degree in Nursing with satisfactory completion of an educational program in the nurse practitioner specialty area.

(3) The graduate degree requirement may be met prior to, concurrent with, or after completion of the nurse practitioner program.

(4) The following documents shall be submitted as part of the initial application process:

(a) An official transcript of the graduate program, showing degree granted and received directly from the registrar of the university or college.

(b) An official transcript, or other evidence of satisfactory completion of the nurse practitioner program showing all courses, grades, quality points, grade point average, degree granted, date of graduation, appropriate registrar's signature or program director's signature received by the Board directly from the program or registrar.

(c) Evidence that the nurse practitioner program meets the Board's standards as described in OAR 851-050-0001.

(5) An applicant for initial certification in Oregon as a nurse practitioner shall meet all requirements for prescribing authority described in OAR 851-050-0125 and obtain prescribing authority under the provisions of OAR 851-050-0120.

(6) Revocation, suspension, or any other encumbrance of a registered nurse license held in another state, territory of the United States, or any foreign jurisdiction may be grounds for denial of certification in Oregon.

(7) The applicant shall submit all fees required by the Board with the application. The fees are not refundable. An application for initial certification, which remains incomplete after one calendar year, shall be considered void.

Stat. Auth.: ORS 678.375, 678.380 & 678.390

Stats. Implemented: ORS 678.380 & 390

Hist.: NER 34, f. & ef. 10-1-76; NER 8-1985, f. & ef. 12-9-85; NB 3-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0300; NB 12-1990, f. & cert. ef. 12-28-90; NB 3-1993(Temp), f. & cert. ef. 2-26-93; NB 8-1993, f. & cert. ef. 8-23-93; NB 7-1996, f. & cert. ef. 10-29-96; Administrative correction 3-23-98; BN 10-2003, f. & cert. ef. 10-2-03; BN 1-2005, f. & cert. ef. 2-17-05

Adm. Order No.: BN 2-2005

Filed with Sec. of State: 2-17-2005

Certified to be Effective: 2-17-05

Notice Publication Date: 1-1-05

Rules Amended: 851-050-0131

Subject: The Board is authorized by ORS 678.385 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. The amendments add the November and December 2004 and January 2005 updates to Drug Facts and Comparisons to the formulary.

Rules Coordinator: KC Cotton—(503) 731-4754

851-050-0131

Formulary for Nurse Practitioners with Prescriptive Authority

(1) The following definitions apply for the purpose of these rules:

(a) "Appliance or device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by a pharmacist.

(b) "Formulary" means a specific list of drugs determined by the Board. The formulary for nurse practitioners with prescriptive authority shall be all the drugs in the Drug Facts and Comparisons dated January 2005 with the exception of certain drugs and drug groups, which are listed below.

(c) "Board" means the Oregon State Board of Nursing.

(2) The Board as authorized by ORS 678.385 (1993), shall determine the drugs which nurse practitioners may prescribe, shall periodically revise the formulary by rulemaking hearing at each regular Board meeting and shall transmit the list of those drugs which are exceptions to the formulary, and which nurse practitioners may not prescribe, to nurse practitioners with prescriptive authority and other interested parties.

(3) The formulary is constructed based on the following premises:

ADMINISTRATIVE RULES

- (a) Nurse practitioners may provide care for specialized client populations within each nurse practitioner category/scope of practice;
- (b) Nurse practitioner prescribing is limited by the nurse practitioner's scope of practice and knowledge base within that scope of practice;
- (c) Nurse practitioners may prescribe the drugs appropriate for patients within their scope of practice as defined by OAR 851-050-0005;
- (d) Nurse practitioners may prescribe drugs for conditions the nurse practitioner does not routinely treat within the scope of their practice provided there is ongoing consultation/collaboration with another health care provider who has the authority and experience to prescribe the drug(s);
- (e) Nurse practitioners shall be held strictly accountable for their prescribing decisions;
- (f) All drugs on the formulary shall have Food and Drug Administration (FDA) approval.
- (4) Nurse practitioners with prescriptive authority are authorized to prescribe:
 - (a) All over the counter drugs;
 - (b) Appliances and devices.
 - (5) Nurse practitioners are authorized to prescribe the following drugs as listed in **Drug Facts and Comparisons** dated January 2005:
 - (a) Nutrients and Nutritional Agents — all drugs except Flavocoxid (Limbrel).
 - (b) Hematological Agents — all drugs except Drotrecogin Alfa (Xigris); and Treprostinil Sodium (Romodulin).
 - (c) Endocrine and Metabolic Agents — all drugs except:
 - (A) I 131;
 - (B) Gallium Nitrate; and
 - (C) Mifepristone (Mifeprex); and
 - (D) Abarelix (Plenaxis).
 - (d) Cardiovasculars — all drugs except:
 - (A) Cardioplegic Solution;
 - (B) Fenoldopam Mesylate (Corlopam);
 - (C) Dofetilide (Tikosyn); and
 - (D) Bosentan (Tracleer).
 - (e) Renal and Genitourinary Agents — all drugs;
 - (f) Respiratory Agents — all drugs;
 - (g) Central Nervous System Agents:
 - (A) Class II Controlled Substances — Only the following drugs:
 - (i) Tincture of opium;
 - (ii) Codeine;
 - (iii) Hydromorphone;
 - (iv) Morphine;
 - (v) Oxycodone, Oxymorphone;
 - (vi) Topical Cocaine Extracts and Compounds;
 - (vii) Fentanyl;
 - (viii) Meperidine;
 - (ix) Amphetamines;
 - (x) Methylphenidates;
 - (xi) Pentobarbital;
 - (xii) Secobarbital;
 - (xiii) Methadone Hydrochloride (in accordance with OAR 851-045-0015(2)(n) and 851-050-0170); and
 - (xiv) Levorphanol.
 - (B) General Anesthetic Agents — no drugs which are general anesthetic barbiturates, volatile liquids or gases, with the exception of nitrous oxide; and
 - (C) Chymopapain is excluded.
 - (h) Gastrointestinal Agents — all drugs except: Monoctanoic;
 - (i) Anti-infectives, Systemic — all drugs;
 - (j) Biological and Immunologic Agents — all drugs except Basiliximab (Simulect);
 - (k) Dermatological Agents — all drugs except Psoralens;
 - (l) Ophthalmic and Otic Agents — all drugs except:
 - (A) Punctal plugs;
 - (B) Collagen Implants;
 - (C) Indocyanine Green;
 - (D) Hydroxypropal (Methyl) Cellulose;
 - (E) Polydimethylsiloxane;
 - (F) Fomivirsen Sodium (Vitravene);
 - (G) Verteporfin;
 - (H) Levobetaxolol HCL (Betaxon);
 - (I) Travoprost (Travatan);
 - (J) Bimatoprost (Lumigan); and
 - (K) Unoprostone Isopropyl (Rescula).
 - (m) Antineoplastic Agents — all drugs except:

- (A) NCI Investigational Agents;
- (B) Samarium Sm53;
- (C) Denileukin Diftitox (Ontak);
- (D) BCG, Intravesical (Pacis);
- (E) Arsenic Trioxide (Trisenox);
- (F) Ibritumomab Tiuxetan (Zevalin);
- (G) Tositumomab and Iodine 131 I-Tositumomab (Bexxar); and
- (H) Sclerosol.
- (n) Diagnostic Aids:
 - (A) All drugs except Arbutamine (GenESA);
 - (B) Thyrotropin Alfa (Thyrogen);
 - (C) Miscellaneous Radiopaque agents — no drugs from this category

except:

- (i) Iopamidol;
 - (ii) Iohexol; and
 - (iii) Ioxilan (Oxilan).
- Stat. Auth.: ORS 678.375 & 678.385
Stats. Implemented: ORS 678.385
Hist.: NB 11-1993(Temp), f. 10-26-93, cert. ef. 11-4-93; NB 2-1994, f. & cert. ef. 4-15-94; NB 7-1994, f. & cert. ef. 9-28-94; NB 3-1995, f. & cert. ef. 4-12-95; NB 6-1995(Temp), f. & cert. ef. 6-15-95; NB 8-1995, f. & cert. ef. 6-29-95; NB 11-1995, f. & cert. ef. 10-9-95; NB 1-1996, f. & cert. ef. 2-29-96; NB 3-1996, f. & cert. ef. 6-11-96; NB 8-1996, f. & cert. ef. 10-30-96; NB 10-1996, f. & cert. ef. 12-2-96; NB 5-1997, f. & cert. ef. 3-6-97; NB 7-1997, f. & cert. ef. 5-13-97; NB 8-1997, f. & cert. ef. 7-1-97; NB 13-1997, f. & cert. ef. 9-29-97; NB 14-1997, f. & cert. ef. 12-11-97; BN 4-1998, f. & cert. ef. 3-13-98; BN 5-1998, f. & cert. ef. 5-11-98; BN 8-1998, f. & cert. ef. 7-16-98; BN 12-1998, f. & cert. ef. 9-22-98; BN 13-1998, f. & cert. ef. 12-1-98; BN 1-1999, f. & cert. ef. 3-4-99; BN 3-1999, f. & cert. ef. 5-4-99; BN 5-1999, f. & cert. ef. 7-1-99; BN 9-1999, f. & cert. ef. 10-20-99; BN 13-1999, f. & cert. ef. 12-1-99; BN 3-2000, f. & cert. ef. 2-25-00; BN 5-2000, f. & cert. ef. 4-24-00; BN 8-2000, f. & cert. ef. 7-3-00; BN 9-2000, f. & cert. ef. 9-18-00; BN 10-2000, f. & cert. ef. 12-15-00; BN 2-2001, f. & cert. ef. 2-21-01; BN 6-2001, f. & cert. ef. 4-24-01; BN 9-2001, f. & cert. ef. 7-9-01; BN 13-2001, f. & cert. ef. 10-16-01; BN 4-2002, f. & cert. ef. 3-5-02; BN 11-2002, f. & cert. ef. 4-25-02; BN 14-2002, f. & cert. ef. 7-17-02; BN 19-2002, f. & cert. ef. 10-18-02; BN 21-2002, f. & cert. ef. 12-17-02; BN 2-2003, f. & cert. ef. 3-6-03; BN 4-2003, f. & cert. ef. 4-23-03; BN 8-2003, f. & cert. ef. 7-7-03; BN 10-2003, f. & cert. ef. 10-2-03; BN 13-2003, f. & cert. ef. 12-9-03; BN 6-2004, f. & cert. ef. 2-26-04; BN 10-2004, f. & cert. ef. 5-4-04; BN 12-2004, f. & cert. ef. 7-13-04; BN 15-2004, f. & cert. ef. 10-26-04; BN 16-2004, f. & cert. ef. 11-30-04; BN 2-2005, f. & cert. ef. 2-17-05

Board of Optometry
Chapter 852

Adm. Order No.: OPT 1-2005

Filed with Sec. of State: 2-23-2005

Certified to be Effective: 2-23-05

Notice Publication Date: 2-1-05

Rules Amended: 852-005-0010, 852-010-0015, 852-010-0020, 852-010-0023, 852-010-0027, 852-050-0018, 852-070-0030

Subject: 852-005-0010 - Establishes purchasing policies and procedures.

852-010-0015; 852-010-0020; 852-010-0023 - Defines conditions for application for examination and licensure.

852-010-0027 - Further defines unprofessional conduct.

852-050-0018 - Defines official address of record.

852-070-0030 - Clarifies continuing education reporting requirements.

Rules Coordinator: David W. Plunkett—(503) 373-7721, ext. 23

852-005-0010

Purchasing

(1) The Oregon Board of Optometry adopts by reference the Oregon Board of Optometry's Purchasing Policies and Procedures. These Purchasing Policies and Procedures contain all of the purchasing related provisions applicable to the Oregon Board of Optometry and are controlling except as otherwise required by statute or rule. Any additions or revisions to the Oregon Board of Optometry's Purchasing Policies and Procedures require action of the full Board.

(2) Copies of the Purchasing Policies and Procedures are available for review at the Board's office.

Stat. Auth.: ORS 182 & ORS 683

Stats. Implemented: ORS 182.460(4)

Hist.: OPT 5-1998, f. 6-29-98, cert. ef. 7-1-98; OPT 1-2005, f. & cert. ef. 2-23-05

852-010-0015

Application for Examination and Licensure

(1) Each applicant must meet educational qualifications and must comply with the requirements of ORS 683.040 before the applicant will be accepted for examination and licensure.

(2) Each inquiry regarding application for licensure as a Doctor of Optometry must be directed to the office of the Board of Optometry.

ADMINISTRATIVE RULES

- (3) The application will be completed upon receipt by the Board of:
 - (a) An application form;
 - (b) A copy of the official final transcript from an accredited College of Optometry indicating receipt of the Doctor of Optometry degree;
 - (c) A copy of the record establishing satisfactory completion of a course in pharmacology as it applies to optometry from an institution approved under ORS 683.040(2) when applicable;
 - (d) Verification of the passage of the examination of the National Board of Examiners in Optometry;
 - (e) Receipt by the Board's office of the \$150 application fee; and
 - (f) Confirmation that a candidate for licensure has not been sanctioned for violating the laws, rules and standards of ethics of another jurisdiction if licensed therein.
- (g) Documentation of completion of the required continuing optometric education.
- (4) Any application received from an optometrist who has been sanctioned by revocation of license by another optometric licensing jurisdiction shall be reviewed on a case by case basis by the Board.

Stat. Auth.: ORS 683 & ORS 182

Stats. Implemented: ORS 683.140, 683.060, 683.270 & 182.466

Hist.: OE 2, f. 12-5-57; OE 2-1984, f. & cf. 7-14-84; OP 1-1987, f. & cf. 4-30-87; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1993(Temp), f. & cert. ef. 5-17-93; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1994, f. & cert. ef. 7-22-94; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2005, f. & cert. ef. 2-23-05

852-010-0020

Rules for Examination and Licensure

(1) Pursuant to ORS 683.060(2), the Board will require a passing score on Parts I, II, III, (PAM and Clinical Skills) and TMOD (Treatment and Management of Ocular Disease) of the National Board of Examiners in Optometry (NBEO) examination. NBEO standards for passing the NBEO examination will be acceptable to the Board.

(2) The applicant for examination and licensure must:

- (a) Provide confirmation from all states ever licensed regarding violation of laws, rules and standards of ethics while licensed in those states.
- (b) Submit documentation of continuing education hours as required in OAR 852-070.
- (c) Pass a written examination relating to Oregon optometric law and administrative rules, and
 - (A) Score at least 75 on the written examination
 - (B) Must pass the written examination within the 12 months previous to date of Oregon licensure.
- (C) Since the Administrative Rule and Law examination is not clinical in nature, any applicant who does not receive a passing score on the Administrative Rule and Law examination may retake the Administrative Rule and Law examination within 90 days of the reading of the results. The Board will set a location, date and time for the administration. The examination fee for each administration of the Administrative Rule and Law examination by the Board is \$75.
- (D) Any applicant whose conduct constitutes cheating or subverting of the process of the evaluation of professional competency by the Board or by an examiner may be dismissed from the examination and denied licensure.

Stat. Auth.: ORS 182 & ORS 683
Stats. Implemented: ORS 683.060, 683.270 & 182.466
Hist.: OE 2, f. 12-5-57; OE 8, f. 4-23-71, ef. 5-25-71; OE 2-1979, f. & cf. 10-29-79; OE 2-1984, f. & cf. 7-14-84; OE 1-1985, f. & cf. 7-9-85; OP 1-1987, f. & cf. 4-30-87; OP 12-1988(Temp), f. & cert. ef. 8-30-89; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1993(Temp), f. & cert. ef. 5-17-93; OP 3-1993, f. & cert. ef. 10-27-93; OPT 6-1998, f. 12-28-98, cert. ef. 1-1-99; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2005, f. & cert. ef. 2-23-05

852-010-0023

Rules for Endorsement Examination and Licensure

Pursuant to ORS 683.220 the Board may grant to an applicant a license by endorsement for the practice of optometry if the applicant:

- (1) Holds a license for the practice of optometry obtained by examination in another state in the United States;
- (2) Has been continuously engaged in the practice of optometry for not less than two years immediately preceding the application to the Board;
- (3) Has educational qualifications the Board considers equivalent to the educational requirements necessary for licensing by the Board at the time the applicant commenced the practice of optometry. The educational requirements shall include a passing score on Parts I, II, III, (PAM and Clinical Skills) and TMOD (Treatment and Management of Ocular Disease) of the National Board of Examiners in Optometry (NBEO) exam-

ination or its equivalent, as determined by the Board. NBEO standards for passing the NBEO examination will be acceptable to the Board;

(4) Submits documentation satisfactory to the Board of continuing optometric education hours equivalent to the requirements established by OAR 852-70;

(5) Provides confirmation from all states ever licensed regarding violation of laws, rules and standards of ethics while licensed in those states. The National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank shall be queried for adverse actions on each person making an application for licensure by endorsement.

(6) Pays the licensure by endorsement application fee of \$250; and

(7) Passes a written examination relating to Oregon optometric law and administrative rules.

(a) Must score at least 75 on the written examination;

(b) Must pass the written examination within the 12 months previous to date of Oregon licensure.

(c) Since the Administrative Rule and Law examination is not clinical in nature, any applicant who does not receive a passing score on the Administrative Rule and Law examination may retake the Administrative Rule and Law examination within 90 days of the reading of the results. The Board will set a location, date and time for the administration. The examination fee for each administration of the Administrative Rule and Law examination by the Board is \$75.

(8) Any applicant whose conduct constitutes cheating or subverting of the process of the evaluation of professional competency by the Board or by an examiner may be dismissed from the examination and denied licensure.

Stat. Auth.: ORS 683 & ORS 182

Stats. Implemented: ORS 683.220, ORS 683.270 & ORS 182.466

Hist.: OPT 2-2001, f. 12-13-01, cert. ef. 1-1-02; OPT 1-2005, f. & cert. ef. 2-23-05

852-010-0027

Definition of Unprofessional Conduct

Unprofessional conduct within the meaning of ORS 683.140(3) includes, but is not limited to:

(1) Fraud, misrepresentation or dishonesty.

(2) Advertising optometric services, treatments, or advice in which untruthful, improbable, misleading, deceiving or impossible statements are made.

(3) Aiding an unlicensed person in the practice of optometry.

(4) Failure to train and supervise any unlicensed person who performs any work covered in this chapter.

(5) Permitting another person to use the licensee's certificate.

(6) Excessive use of intoxicants.

(7) Unlawful use of drugs or controlled substances.

(8) The use of threats or harassment or to delay or to obstruct any person in providing evidence in any investigation, disciplinary action, or other legal action instituted by the Board.

(9) The discharge of an employe based primarily on the employe's attempt to comply or aid in the compliance of the Board's rules.

(10) The use of threats, harassment, or any other conduct which obstructs or delays a member of the Board, a member of the Board's staff or a duly appointed agent of the Board in carrying out their functions under the Board's rules.

(11) Willfully deceiving or attempting to deceive the Board, an employe of the Board, or an agent of the Board in reference to any matter under investigation by the Board including the alteration or destruction of any records in order to obstruct or delay an investigation by the Board.

(12) Failing to respond in writing to a Board request for information as required.

(13) Failing to appear before the Board at a time and place designated by the Board for such appearance.

(14) Violations of ORS 676.110(5) (use of titles), which states, in part, that any person practicing optometry who uses the title "doctor", or any contraction thereof, "clinic", "institute", "specialist" or any other assumed name or title in connection with the profession, in all advertisements, professional notices, or any written or printed matter must add the word "optometrist" or the words "doctor of optometry" or "optometric physician."

(15) Conduct which could be construed as moral turpitude; and

(16) Any conduct or practice contrary to recognized standards of ethics of the optometric profession which includes:

(a) Sexual abuse — comprises conduct which constitutes a violation of any provision of ORS 163.305 through 163.465, Criminal Sexual Offenses, if proven by at least a preponderance of the evidence in any criminal, civil, or administrative litigation, or admitted or stipulated by the professional.

ADMINISTRATIVE RULES

Bureau of Labor and Industries Chapter 839

(b) Sexual Violation — Comprises professional-patient sex, whether initiated by the patient or not, and engaging in any conduct with a patient that is sexual, or may be reasonably interpreted as sexual, including, but not limited to: sexual intercourse; genital to genital contact; oral to genital contact; oral to anal contact; oral to oral contact except CPR; touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment or where the patient has refused or has withdrawn consent; encouraging the patient to masturbate in the presence of the professional or masturbation by the professional while the patient is present.

(c) Sexual Impropriety — Comprises any behavior, gestures, or expressions that are seductive or sexually demeaning to a patient of normal sensibilities; inappropriate procedures, including, but not limited to, disrobing or draping practices that reflect a lack of respect for the patient's privacy; inappropriate comments about or to the patient, including, but not limited to, making sexual comments about a patient's body or underclothing, making sexualized or sexually demeaning comments to a patient, inappropriate comments on the patient's or professional's sexual orientation (homosexual or heterosexual or bisexual), making comments about potential sexual performance during an examination or consultation, requesting the details of sexual history or sexual likes or dislikes; initiation by the professional of conversation regarding the sexual problems, preferences or fantasies of the professional or the patient; kissing of a sexual nature.

(17) Failing to make full payment to the Board of all Board assessed fees, fines and penalties.

(18) Failing to give written notification to the Board of any disciplinary action or sanction related to the practice of optometry by any state licensing agency.

(19) Failing to give written notification to the Board of any felony or misdemeanor convictions except minor traffic offenses.

(20) Failing to keep complete and accurate records for a patient.

(21) Failing to retain or make appropriate transfer of the care of patient records.

(22) Failing to comply with a Board order.

(23) Failing to use, prescribe or administer controlled substances in Schedules III — V within the scope of practice of optometry or in a manner that impairs the health and safety of an individual.

Stat. Auth.: ORS 683 & ORS 182

Stats. Implemented: ORS 683.140, ORS 683.270 & ORS 182.466

Hist.: OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 1-1993, f. & cert. ef. 2-10-93; OP 3-1993, f. & cert. ef. 10-27-93; OPT 2-2000, f. 4-28-00, cert. ef. 5-1-00; OPT 3-2000, f. 6-26-00, cert. ef. 7-1-00; OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2005, f. & cert. ef. 2-23-05

852-050-0018

Official Address of Record

(1) In accordance with ORS 683.100, each Doctor of Optometry shall notify the board in writing of his/her practice location, which is automatically recorded as the licensee's official address of record for mailing purposes. The licensee may change the official address of record to a home address or another address by notifying the Board in writing of the new mailing address. All correspondence from the Board will be sent to the designated official address of record. The official address of record must include a street address. Post office boxes are not acceptable unless a street address is included with it.

(2) Failure to notify the Board in writing of a change in the licensee's official address of record in accordance with (1) above may subject the licensee to a fee of \$50 for the first failure; \$100 for the second failure; \$200 for each subsequent failure.

Stat. Auth.: ORS 683 & ORS 182

Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466

Hist.: OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2005, f. & cert. ef. 2-23-05

852-070-0030

Calculation of Credit

A Doctor of Optometry shall be required to meet the continuing optometric education requirement beginning with the second license year renewal period following the year of original licensure by the Board.

(1) This applies only to graduates of optometry school not more than one year post graduation.

(2) All other Doctors of Optometry must meet the continuing optometric education requirements of division 70.

Stat. Auth.: ORS 182 & ORS 683

Stats. Implemented: ORS 683.210 & ORS 182.466

Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 2-1994, f. & cert. ef. 7-22-94; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 1-2005, f. & cert. ef. 2-23-05

Adm. Order No.: BLI 7-2005

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Rules Ren. & Amended: 839-016-0000 to 839-025-0000, 839-016-0002 to 839-025-0002, 839-016-0003 to 839-025-0003, 839-016-0004 to 839-025-0004, 839-016-0006 to 839-025-0006, 839-016-0007 to 839-025-0007, 839-016-0008 to 839-025-0008, 839-016-0010 to 839-025-0010, 839-016-0013 to 839-025-0013, 839-016-0020 to 839-025-0020, 839-016-0025 to 839-025-0025, 839-016-0030 to 839-025-0030, 839-016-0033 to 839-025-0033, 839-016-0034 to 839-025-0034, 839-016-0035 to 839-025-0035, 839-016-0040 to 839-025-0040, 839-016-0043 to 839-025-0043, 839-016-0045 to 839-025-0045, 839-016-0050 to 839-025-0050, 839-016-0054 to 839-025-0054, 839-016-0060 to 839-025-0060, 839-016-0065 to 839-025-0065, 839-016-0080 to 839-025-0080, 839-016-0085 to 839-025-0085, 839-016-0090 to 839-025-0090, 839-016-0095 to 839-025-0095, 839-016-0100 to 839-025-0100, 839-016-0150 to 839-025-0150, 839-016-0155 to 839-025-0155, 839-016-0200 to 839-025-0200, 839-016-0210 to 839-025-0210, 839-016-0220 to 839-025-0220, 839-016-0230 to 839-025-0230, 839-016-0240 to 839-025-0240, 839-016-0300 to 839-025-0300, 839-016-0310 to 839-025-0310, 839-016-0320 to 839-025-0320, 839-016-0330 to 839-025-0330, 839-016-0340 to 839-025-0340, 839-016-0500 to 839-025-0500, 839-016-0510 to 839-025-0510, 839-016-0520 to 839-025-0520, 839-016-0530 to 839-025-0530, 839-016-0540 to 839-025-0540, 839-016-0700 to 839-025-0700, 839-016-0750 to 839-025-0750

Subject: The renumbering of the Prevailing Wage Rate rules conforms the rules to the provisions of HB 2341 (revised "Public Contracting Code"), passed by the 2003 Legislature, in ORS 279A, 279B and 279C. They are "housekeeping" in nature and conform to the statutes implemented.

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

839-025-0000

Notice of Proposed Rules

(1) Prior to the permanent adoption, amendment, or repeal of any rule relating to Prevailing Wage Rates on Public Works, the Bureau of Labor and Industries must give notice of intended action as required in OAR 839-002-0002.

(2) The notice provisions in OAR 839-002-0002 do not apply to the determination of prevailing wage rates pursuant to ORS 279C.815(2) or to the adoption of such rates as rule amendments to OAR 839-025-0700 and 839-025-0750.

Stat. Auth.: ORS 279 & 651.060(4)

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BLI 26-2000(Temp), f. 12-19-00, cert. ef. 12-20-00 thru 6-18-01; BLI 15-2001, f. & cert. ef. 11-14-01; BLI 9-2004, f. 7-26-04, cert. ef. 7-27-04; Renumbered from 839-016-0000, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0002

Model Rules of Procedure

The Attorney General's Model Rules of Procedure, effective September 9, 1995, are hereby adopted by reference as permanent rules for Prevailing Wage Rates on Public Works matters except that the Model Rules of Procedure shall not apply to contested cases conducted for violations of ORS Chapter 279C enforced by the Bureau of Labor and Industries. The rules for contested case proceedings are set forth in OAR 839-050-0000 to 839-050-0420. Any matters not addressed in OAR 839-050-0000 to 839-050-0420 will be governed by the Model Rules of Procedure.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Bureau of Labor and Industries.]

Stat. Auth.: ORS 183, 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. & ef. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 9-1986, f. & ef. 9-2-86; BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0002, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

ADMINISTRATIVE RULES

839-025-0003

Forms

(1) All forms referenced in these rules may be obtained on the bureau's website; www.boli.state.or.us or at the address listed below.

(2) Completed forms, requests and fees referenced in these rules may be filed with the Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St. #1045, Portland, OR 97232.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0003, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0004

Definitions

As used in these rules, unless the context requires otherwise:

(1) "Apprentice" means:

(a) A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training (BAT) or with any state apprenticeship agency recognized by BAT; or

(b) A person in probationary employment as an apprentice in such an apprenticeship program, but who is not individually registered in the program, but who has been certified by the BAT or a state apprenticeship agency to be eligible for probationary employment as an apprentice.

(2) "The Basic Hourly Rate of Pay" or "Hourly Rate" means the rate of hourly wage, excluding fringe benefits, paid to the worker.

(3) "Bureau" means the Bureau of Labor and Industries.

(4) "Commissioner" means the Commissioner of the Bureau of Labor and Industries, or designee.

(5) "Construction" means the initial construction of buildings and other structures, or additions thereto, and of highways and roads. "Construction" does not include the transportation of material or supplies to or from the public works project by employees of a construction contractor or construction subcontractor.

(6) "Division" means the Wage and Hour Division of the Bureau of Labor and Industries.

(7) "Employ" includes to suffer or permit to work.

(8) "Fringe benefits" means the amount of:

(a) The rate of contribution irrevocably made on a regular basis and not less often than quarterly by a contractor or subcontractor to a trustee or to a third person pursuant to a plan, fund or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program which 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 where the contractor or subcontractor is not required by other federal, state or local law to provide any of such benefits. Other bona fide fringe benefits do not include reimbursement to workers for meals, lodging or other travel expenses, nor contributions to industry advancement funds (CIAF for example).

(9) "Major renovation" means the remodeling or alteration of buildings and other structures within the framework of an existing building or structure and the alteration of existing highways and roads, the contract price of which exceeds \$25,000.

(10) "Nonprofit organization," as used in subsection OAR 839-025-0100(2), 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.

(11) "Normal business hours" means the hours during which the office of the contractor or subcontractor is normally open for business. In the absence of evidence to the contrary, the Division will consider the hours between 8:00 a.m. and 5:00 p.m., excluding the hours between 12:00 noon and 1:00 p.m., on weekdays as normal business hours.

(12) "Overtime" means all hours worked:

(a) On Saturdays;

(b) On the following legal holidays:

(A) Each Sunday;

(B) New Year's Day on January 1;

(C) Memorial Day on the last Monday in May;

(D) Independence Day on July 4;

(E) Labor Day on the first Monday in September;

(F) Thanksgiving Day on the fourth Thursday in November;

(G) Christmas Day on December 25.

(c) Over 40 hours in a week; and either

(d) Over eight (8) hours in a day; or

(e) Over 10 hours in a day provided:

(A) The employer has established a work schedule of four consecutive days (Monday through Thursday or Tuesday through Friday) pursuant to OAR 839-025-0034; and

(B) The employer operates in accordance with this established work schedule.

(13) "Overtime rate" means the basic hourly rate of pay multiplied by one and one-half.

(14) "Overtime wages" means the overtime hours worked multiplied by the overtime rate.

(15) "Person" includes a public or private corporation, a partnership, a sole proprietorship, a limited liability company, a government or governmental instrumentality.

(16) "Prevailing wage rate claim" means a claim for wages filed by a worker with the Division.

(17) "Public agency" 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.

(18) "Public funds" means any revenue, money or that which can be valued in money collected for, or in the custody and control of a public agency.

(19) "Public work," "public works" or "public works project" 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 the primary purpose of which is to serve the public interest regardless of whether title thereof is in a public agency but does not include the reconstruction or renovation of privately owned property which is leased by a public agency.

(20) "Public works contract" or "contract" means any contract, agreement or understanding, written or oral, into which a public agency enters for any public work.

(21) "Reconstruction" means highway and road resurfacing and rebuilding, the restoration of existing highways and roads, and the restoration of buildings and other structures.

(22) "Reconstruction or renovation of privately owned property which is leased by a public agency" includes improvements of all types within the framework or footprint of an existing building or structure. "Reconstruction and renovation of privately owned property which is leased by a public agency" does not include:

(a) New construction that is initiated with the intent to lease to an identified public agency, either exclusively or as a primary tenant. A primary tenant is one who leases 51% or more of the space.

(b) Tenant improvements that meet the following criteria:

(A) Are paid for with public funds, either directly or indirectly as defined in OAR 839-025-0100(1)(d)(A) and (B); and

(B) Are performed according to plans, specifications, or criteria furnished by one or more identified public agencies; and

(C) Comprise 51% or more of the value of the building or structure. When the cost of the tenant improvements are borne by more than one public agency, prevailing wage coverage will not be found unless the public agencies act as a joint enterprise for the purposes of the construction project.

(i) For buildings or structures constructed within the past three years, the value will be determined by the total construction cost.

(ii) For buildings constructed more than three years before the tenant improvements, the value will be the real market value determined for property tax purposes.

(23) "Site of work" is defined as follows:

(a) The site of work is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed, and other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the site.

(b) Except as provided in paragraph (c) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards and similar facilities, are part of the site of work provided they are dedicated exclusively, or nearly so, to the performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them. Such facilities which are estab-

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lished by a supplier of materials for the project after the opening of bids are deemed to be dedicated exclusively to the performance of the contract or project.

(c) Not included in the site of work are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, and similar facilities of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the site of work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract or project.

(24) "Special wage determination" means a wage determination made at the request of a public contracting agency and which is applicable only to specific job classes. A special wage determination is issued in those cases where there is no current wage determination applicable to specific job classes and the use of such job classes is contemplated on a public works project.

(25) "Trade" or "occupation" is defined in accordance with the prevailing practices of the construction industry in Oregon.

(26) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Bureau of Apprenticeship and Training as meeting its standards for on-the-job training programs and which has been so certified by that bureau.

(27) "Wage determination" includes the original decision and any subsequent amendments made by the commissioner in accordance with ORS 279C.815.

(28) "Wages" or "Prevailing Wages" means the basic hourly rate of pay and fringe benefits as defined in section (8) of this rule.

(29) "Worker" means a person employed on a public works project and whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental, professional or managerial. The term "worker" includes apprentices, trainees and any person employed or working on a public works project in a trade or occupation for which the commissioner has determined a prevailing rate of wage. (See OAR 839-025-0035.)

Stat. Auth.: ORS 279 & 651.060

Stats. Implemented: ORS 279.334

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 3-1996, f. & cert. ef. 1-26-96; BL 8-1996, f. 8-26-96, cert. ef. 9-1-96; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; BL 15-2001, f. & cert. ef. 11-14-01; BL 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0004, BL 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0006

Purpose and Procedure for Addition of Trade

(1) As a result of technological advancements and/or policy changes, new trades periodically emerge in the construction industry. When this happens, it may be appropriate for the commissioner to add such trades into the prevailing wage rate determinations. The following procedure is designed to insure that new trades are included in prevailing wage rate determinations when appropriate.

(2) Any person may request the addition of a trade by submitting a written request to the Prevailing Wage Rate Unit. This request must, at a minimum, specify:

- (a) Name of proposed trade;
- (b) Minimum education required; and
- (c) Description of minimum skills required and tools used.

(3) The PWR Coordinator will recommend to the commissioner whether or not to conduct a complete study of the proposed trade. The requesting party will be notified in writing by the PWR Coordinator of the commissioner's decision.

(4) If the PWR Coordinator conducts the requested study, the following areas, at a minimum, will be included in the review:

- (a) Relevant practices of the U.S. Department of Labor under the Davis-Bacon Act;
- (b) Whether the proposed trade is substantially different from trades included in the current wage determination;
- (c) The relevant prevailing practices in the State of Oregon.

(5) The PWR Coordinator will submit a report and a recommendation to the commissioner.

(6) The commissioner will decide whether or not to include the proposed trade. The requesting party will be notified in writing of the commissioner's decision.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BL 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0006, BL 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0007

Purpose and Procedure for Special Wage Determination

(1) In planning a public works project, public contracting agencies periodically require the use of a trade not normally included in wage determinations. Special wage determinations allow the commissioner to recognize a trade and establish a rate for it. This procedure also allows the commissioner to respond in a timely fashion to the needs of the contracting agency. Special wage determinations are not available when the wage determination is applicable.

(2) Any public contracting agency may submit a written request for a special wage determination to the Prevailing Wage Rate Unit. The request must contain:

- (a) A written description of the work to be performed; and
- (b) An identification of the requested trade(s).

(3) Within two weeks the PWR Coordinator will recommend to the commissioner whether or not a special wage determination should be established.

(4) If a special wage determination is to be allowed, the PWR Coordinator will provide the requesting agency with the instruments, procedures, and minimum requirements for conducting a wage survey. The requesting agency will conduct the wage survey in accordance with bureau procedures and submit the results to the PWR Coordinator.

(5) The PWR Coordinator will review the data for methodological compliance and accuracy and submit it to the commissioner with a recommendation.

(6) The commissioner will approve or disapprove the special wage determination request after considering the PWR Coordinator's recommendation. The contracting agency will be notified, in writing, of the commissioner's final decision.

(7) If the special wage determination is approved, it is valid only for the locality specified in the special wage determination and only until the first day of July following the date of approval unless amended prior to that date.

(8) A copy of the approved special wage determination will be kept on file by the PWR Coordinator and the Wage and Hour Division.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BL 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0007, BL 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0008

List of Planned Public Improvements

(1) As used in this rule the term "Public improvement" has the same meaning as it does in ORS 279A.010(aa).

(2) Each public agency must prepare and file with the commissioner a list of every public improvement known to the agency that the agency plans to fund during the subsequent budget period. The list must be submitted to the Prevailing Wage Rate Unit not less than 30 days prior to the adoption of the agency's budget. If the agency revises its list after the adoption of its budget, the agency must file the revised list with the commissioner at that time.

(3) Copies of the lists of planned public improvements filed with the commissioner by public agencies as required by ORS 279C.305(2) are available to the public upon written request to the Prevailing Wage Rate Unit. The request must contain the following information:

- (a) The name of the public agency;
- (b) The name of any division, section or department of the public agency, if applicable; and
- (c) The approximate date of the budget period for which the list was filed.

(4) The cost of supplying copies requested in section (3) of this rule will be calculated in accordance with OAR 839-030-0010, which sets forth the fees to be charged by the bureau when responding to requests for copies of public records.

(5) To assist public contracting agencies in complying with the provisions of ORS 279C.305 and these rules, the commissioner has prepared two forms, **WH-118** and **WH-119**. The use of these forms by the public contracting agency is optional. However, the statutory requirements of ORS 279C.305(2) are satisfied when these forms are completed and mailed to the Prevailing Wage Rate Unit. The forms should be completed as follows:

- (a) The Planned Public Improvement Summary form, WH-118,

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should be used to summarize all planned projects in the subsequent fiscal year, noting the project information requested on the form;

(b) ORS 279C.305 requires public contracting agencies to show that they are conforming to state policy when they plan to use their own personnel and equipment on projects estimated to exceed \$125,000. The Capital Improvement Project Cost Comparison Estimate form, **WH-119**, should be completed for the purpose of complying with this provision. In developing cost comparisons, unit costs which can be substantiated by the agency's cost accounting system should be used. Contractor unit prices that reflect bidding data should also be used.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0008, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0010

Payroll and Certified Statement

(1) The form required by ORS 279C.845 is the Payroll and Certified Statement form, **WH-38**. This form must accurately and completely set out the contractor's or subcontractor's payroll for each week during which the contractor or subcontractor employs a worker upon a public works project.

(2) The contractor or subcontractor may submit the weekly payroll on the **WH-38** form or may use a similar form providing such form contains all the elements of the **WH-38** form. When submitting the weekly payroll on a form other than **WH-38**, the contractor or subcontractor must attach the certified statement contained on the **WH-38** form to the payroll forms submitted.

(3) Each Payroll and Certified Statement form must be submitted by the contractor or subcontractor to the public contracting agency by the fifth business day of each month following a month in which workers were employed upon a public works project.

(4) The Payroll and Certified Statement forms received by the public contracting agency are public records subject to the provisions of ORS 192.410 to 192.505. As such, they must be made available upon request. Pursuant to ORS 279C.845(2), information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 through 279C.870.

[ED. NOTE: Forms and Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & 651.060

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 13-1992, f. & cert. ef. 12-14-9; BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0010, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0013

Notice of Award Form

(1) The notification form required by ORS 279C.835 is the Notice of Award of Public Works Contract form, **WH-81**.

(2) The public contracting agency must file the Notice of Award of Public Works Contract form, **WH-81**, with the Prevailing Wage Rate Unit within 30 days of the date the contract was awarded.

(3) Pursuant to ORS 279C.835, the Notice of Award of Public Works Contract form, **WH-81**, must include a copy of the disclosure of first-tier subcontractors submitted to the public contracting agency by the contractor.

(4) Public contracting agencies are not required to file a Notice of Award of Public Works Contract form when the contract awarded is not regulated under the provisions of ORS 279C.800 to 279C.870.

[ED. NOTE: Forms and Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0013, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0020

Public Works Contracts and Contract Specifications; Required Conditions

(1) Every public works contract must contain the following:

(a) A condition or clause that, if the contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person, or the assignee of the person, in connection with the public works contract as such claim becomes due, the proper officer or officers of the public contracting agency may pay such claim and charge the amount of the payment against funds due or to become due the contractor by reason of the contract (Reference: ORS 279C.515);

(b) A condition that no person will be employed for more than 10 hours in any one day, or 40 hours in any one week except in cases of neces-

sity, emergency, or where the public policy absolutely requires it, and in such cases the person so employed must be paid at least time and one-half the regular rate of pay for all time worked:

(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(C) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

(c) A condition that an employer must give notice to employees who work on a public works contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work (Reference: ORS 279C.520);

(d) A condition that the contractor must promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of the contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service (Reference: ORS 279C.530);

(e) A provision that each worker in each trade or occupation employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on the contract, must be paid not less than the applicable prevailing rate of wage. This provision must be included in all contracts regardless of the price of any individual contract, as long as the combined price of all contracts awarded on the project is \$25,000 or more (Reference: ORS 279C.830);

(f) A provision that the contractor must pay to the commissioner a fee equal to one tenth of one percent (.001) of the contract price but no less than \$100 nor more than \$5,000 regardless of the contract price; that the fee must be paid no later than 10 days after receipt of the first progress payment or 60 days after work on the contract has begun, whichever comes first; that final adjustments to the fee must be made within 30 days of the final progress payment after completion of the contract.

(2) The specifications for every public works contract must contain a provision stating the existing prevailing rate of wage in effect at the time the initial specifications were first advertised for bid solicitations.

(3) The provision described in subsection (2) must be included in all specifications for each contract awarded on the project, regardless of the price of any individual contract, so long as the combined price of all contracts awarded on the project is \$25,000 or more. (Reference: ORS 279C.830.) A statement incorporating the existing prevailing wage rate into the specifications by reference will not satisfy these requirements;

(4) All specifications for each contract awarded on the project must contain a provision stating that the contractor must pay to the commissioner a fee equal to one tenth of one percent (.001) of the contract price but no less than \$100 nor more than \$5,000 regardless of the contract price pursuant to ORS 279C.825. The fee must be paid no later than 10 days after receipt of the first progress payment or 60 days after work on the contract has begun, whichever comes first; that final adjustments to the fee must be made within 30 days of the final progress payment after completion of the contract (Reference: ORS 279C.830).

(5) Public contracting agencies may obtain, without cost, a copy of the existing prevailing rate of wages for use in preparing the contract specifications by contacting the Prevailing Wage Rate Unit or any office of the bureau.

Stat. Auth.: ORS 279 & 651.060

Stats. Implemented: ORS 279.316

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 3-1996, f. & cert. ef. 1-26-96; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0020, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0025

Required Records

(1) All contractors and subcontractors performing work on public works contracts shall make and maintain for a period of three (3) years from the completion of work upon such public works records necessary to determine whether the prevailing rate of wage and overtime has been or is being paid to workers upon public works.

(2) In addition to the Payroll and Certified Statement, Form WH-38,

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records necessary to determine whether the prevailing wage rate and overtime wages have been or are being paid include but are not limited to records of:

- (a) The name and address of each employee;
 - (b) The work classification or classifications of each employee;
 - (c) The rate or rates of monetary wages and fringe benefits paid to each employee;
 - (d) The rate or rates of fringe benefit payments made in lieu of those required to be provided to each employee;
 - (e) Total daily and weekly compensation paid to each employee;
 - (f) The daily and weekly hours worked by each employee;
 - (g) Apprenticeship and Training Agreements;
 - (h) Any deductions, rebates or refunds taken from each employee's total compensation and actual wages paid;
 - (i) Any payroll and other such records pertaining to the employment of employees upon a public work.
- (3) When apprentices and/or trainees are employed on a public works project, the records must clearly distinguish them from other employees.
- (4) When a contractor or subcontractor employs a worker on public works projects and non public works projects during the same work week and the worker is paid a rate of pay which is less than the prevailing wage rate when working on a non public works project, the contractor or subcontractor must separately record the hours worked on the public works projects and those hours worked elsewhere.
- (5) Contractors shall maintain records documenting that the appropriate fee was paid. Such records shall be maintained for a period of two years and shall include but are not limited to:
- (a) Contract documents showing the contract price;
 - (b) Change orders or other adjustments to the final contract price;
 - (c) Receipts showing amounts paid.
- Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0025, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0030

Records Availability

(1) Every contractor and subcontractor performing work on a public works contract shall make available to representatives of the Wage and Hour Division records necessary to determine if the prevailing wage rate has been or is being paid to workers upon such public work and records showing contract prices and sums paid as fees to the bureau. Such records shall be made available to representatives of the Wage and Hour Division for inspection and transcription during normal business hours.

(2) The contractor or subcontractor shall make the records referred to in section (1) of this rule available within 24 hours of a request from a representative of the Wage and Hour Division or at such later date as may be specified by the division.

(3) When a prevailing wage rate claim or complaint has been filed with the Wage and Hour Division or when the division has otherwise received evidence indicating that a violation has occurred and upon a written request by a representative of the Division a public works contractor or subcontractor shall send a certified copy of such contractor's or subcontractor's payroll records to the Division within ten days of receiving such request. The Division's written request for such certified copies will indicate that a prevailing wage rate claim has been filed or that the division has received evidence indicating that a violation has occurred.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0030, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0033

Posting Requirements

(1) Every contractor or subcontractor must post the prevailing wage rates applicable to the project in a conspicuous place at the site of work. The posting must be easily accessible to employees working on the project. Contractors may obtain a copy of the applicable wage rates by contacting the Prevailing Wage Rate Unit or any office of the bureau.

(2) When a contractor or subcontractor provides for or contributes to a health and welfare plan or pension plan for employees who are working on a public works project, the contractor or subcontractor must post a notice containing the following information:

- (a) A description of the plan or plans;
 - (b) Information on how and where claims can be made; and
 - (c) Where to obtain more information.
- (3) The notice required to be posted in section (2) of this rule must be

posted in a conspicuous place at the site of work and be easily accessible to employees working on the project. The notice must be posted in the same location as the prevailing wage rate pursuant to section (1) of this rule.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0033, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0034

Establishing a Work Schedule

(1) Employers must give written notice to employees who work on a public contract of the days per week and number of hours per day they may be required to work.

(2) The notice required by section (1) of this rule may be given:

- (a) At the time the employee is hired;
- (b) Prior to commencing work on the contract; or
- (c) By posting a notice at a place frequented by and accessible to employees.

(3) If an employer fails to give the notice required by section (1) of this rule, the work schedule will be presumed to be a five-day work schedule.

(4) The work schedule may be changed by the employer if the change is intended to be permanent and is not designed to evade the overtime requirements of ORS 279C.540 and OAR 839-025-0050. Notice of any work schedule changes intended to be made by an employer must be provided in writing to affected employees in advance of the change.

Stat. Auth.: ORS 279 & 651.060
Stats. Implemented: ORS 279.334
Hist.: BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; Renumbered from 839-016-0034, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0035

Payment of Prevailing Rate of Wage

(1) Every contractor or subcontractor employing workers on a public works project must pay to such workers no less than the prevailing rate of wage for each trade or occupation, as determined by the commissioner, in which the workers are employed.

(2) Every person paid by a contractor or subcontractor in any manner for the person's labor in the construction, reconstruction, major renovation or painting of a public work is employed and must receive no less than the prevailing rate of wage, regardless of any contractual relationship alleged to exist. Thus, for example, if partners are themselves performing the duties of a worker, the partners must receive no less than the prevailing rate of wage for the hours they are so engaged.

(3) Persons employed on a public works project and who are spending more than 20% of their time during any workweek in performing duties which are manual or physical in nature as opposed to mental or managerial in nature are workers and must be paid the prevailing rate of wage. Mental or managerial duties include, but are not limited to, administrative, executive, professional, supervisory or clerical duties.

(4) Persons employed on a public works project for the manufacture or furnishing of materials, articles, supplies or equipment (whether or not a public agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) are not workers required to be paid the prevailing rate of wage unless the employment of such persons is performed in connection with and at the site of the public works project.

(5) Persons employed on a public works project who are employed by a commercial supplier of goods or materials must be paid no less than the prevailing rate of wage when the work is performed at the "site of work" as that term is defined in OAR 839-025-0004(23) or when the work is performed in fabrication plants, batch plants, barrow pits, job headquarters, tool yards or other such places that are dedicated exclusively or nearly so to the public works project.

(6) Persons employed on a public works project by the construction contractor or construction subcontractor to transport materials or supplies to or from the public works project are required to be paid the prevailing wage rate for work performed in connection with the transportation of materials or supplies at the "site of work" as that term is defined in OAR 839-025-0004(23).

(7) Persons employed on a public works project for service work as opposed to construction work are not workers required to be paid the prevailing rate of wage.

(8) Every apprentice, as defined in these rules, must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits as determined pursuant to ORS 279C.800 to 279C.870.

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Any worker listed on a payroll at an apprentice wage rate, who is not an apprentice as defined in these rules must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of apprentices employed exceeds the ratio permitted in the applicable standards, all apprentices so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

(9) Every trainee, as defined in these rules, must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits determined pursuant to ORS 279C.800 to 279C.870. Any worker listed on a payroll at a trainee wage rate, who is not a trainee as defined in these rules must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of trainees employed exceeds the ratio permitted in the applicable standards, all trainees so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.350

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 8-1996, f. 8-26-96, cert. ef. 9-1-96; BL 1-1997(Temp), f. & cert. ef. 4-29-97; BL 4-1997, f. & cert. ef. 8-29-97; BL 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0035, BL 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0040

Payment of Fringe Benefits

(1) Each contractor and subcontractor required to pay workers the prevailing rate of wage must pay no less than the hourly rate of pay and fringe benefits as determined by the Commissioner.

(2) The rate of pay for fringe benefits paid to apprentices and trainees shall be not less than such rate paid to the majority of such apprentices and trainees in the same trade or occupation as determined by the commissioner. If there is no majority in the same trade or occupation, as determined by the commissioner, apprentices and trainees shall be paid the full amount of the fringe benefits.

(3) The requirements of section (1) of this rule are met when the amount of the fringe benefit or benefits is paid to the worker, in cash, in lieu of a third party administering a fringe benefit or benefits program.

(4) When a contractor or subcontractor pays an hourly rate of pay which exceeds that which is determined by the Commissioner, the amount by which the rate is exceeded may be credited toward payment of the amount of fringe benefits determined by the Commissioner for the trade or occupation.

(5) When a contractor or subcontractor pays a rate for any one fringe benefit which exceeds that which is determined for the fringe benefit, the amount by which the rate is exceeded may be credited toward payment of the amount to be paid for all fringe benefits as determined by the Commissioner for the trade or occupation.

(6) When a contractor or subcontractor pays an amount for fringe benefits which exceeds that which is determined by the Commissioner the amount by which it exceeds the determination may be credited toward payment of the hourly rate of pay as determined by the Commissioner.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.350

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 1-1997(Temp), f. & cert. ef. 4-29-97; BL 4-1997, f. & cert. ef. 8-29-97; Renumbered from 839-016-0040, BL 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0043

Frequency of Payment of Fringe Benefits

(1) Contributions made by a contractor or subcontractor to a fringe benefit program must be made on a regular basis and not less often than quarterly.

(2) Fringe benefit payments made directly to the worker in lieu of a contribution to a fringe benefit program must be paid to the worker as wages on the regularly scheduled pay date.

Stat. Auth.: ORS 279 & 651.060

Stats. Implemented: ORS 279.348

Hist.: BL 1-1998, f. & cert. ef. 1-5-98; Renumbered from 839-016-0043, BL 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0045

Youth Apprentices

Youth apprentices, as defined in ORS 344.745, shall not be employed on public works construction projects (Reference: ORS 344.750(5)).

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0045, BL 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0050

Overtime Wages Computations

(1) As used in this rule "work day" or "day" means a period of 24 consecutive hours beginning with the time the employee regularly starts work. The beginning of the work day may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of ORS 279C.540. For purposes of overtime wages computation, each work day stands alone.

(2) Contractors and subcontractors required by ORS 279C.540 to pay overtime wages shall pay such wages as follows:

(a) Workers must be paid at least time and one-half the hourly rate of pay, excluding fringe benefits, for all hours worked:

(A) On Saturdays;

(B) On the following legal holidays:

(i) Each Sunday;

(ii) New Year's Day on January 1;

(iii) Memorial Day on the last Monday in May;

(iv) Independence Day on July 4;

(v) Labor Day on the first Monday in September;

(vi) Thanksgiving Day on the fourth Thursday in November;

(vii) Christmas Day on December 25.

(C) Over 40 hours in a week; and either

(D) Over eight (8) hours in a day; or

(E) Over 10 hours in a day provided:

(i) The employer has established a work schedule of four consecutive days (Monday through Thursday or Tuesday through Friday) pursuant to OAR 839-025-0034; and

(ii) The employer operates in accordance with this established work schedule.

(b) Where a worker performs work in one or more classifications which provide for one or more hourly rates of pay the worker must be paid, in addition to the straight time hourly earnings for all hours worked, a sum determined by multiplying one half the weighted average of the hourly rates by the number of overtime hours worked pursuant to subsection (a) of this rule;

(c) When determining the hourly wage rate for overtime purposes, the amount paid for fringe benefits shall be excluded from the computations. Though the amount paid for fringe benefits must be paid for all hours worked, such amount is not included when determining the overtime rate. For example, a worker who works a five-day work schedule and earns \$15 per hour plus \$3 per hour in fringe benefits and works ten hours in a day is entitled to \$195 ((\$15/hr x 8 hours) + (\$22.50/hr x 2 hours) + (\$3/hr x 10 hours) = \$195) for that day.

(3) Examples of computing overtime wages: See **Appendix 3**.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 279 & 651.060

Stats. Implemented: ORS 279.334

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; Renumbered from 839-016-0050, BL 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0054

Exemption from Overtime Pay Requirements on Public Improvement Projects

(1) As used in ORS 279C.540(4) and in this rule, unless the context requires otherwise:

(a) "A collective bargaining agreement in effect" means a collective bargaining agreement which is recognized as being binding on all parties by the National Labor Relations Board; which is enforceable within the geographic area in which the public improvement is located; and, the terms of which extend to workers who are working on the public improvement project;

(b) "Labor organization" means any organization certified as such by the National Labor Relations Board.

(2) ORS 279C.540(4) provides an exemption from the overtime pay requirements of ORS 279C.540(1), (2) and (3) under the following circumstances:

(a) The contract on which work is performed is a public improvement contract; and

(b) The contractor is a party to a collective bargaining agreement in effect with any labor organization.

(3) The exemption would not apply, for example, under the following circumstances:

(a) To workers employed on a public improvement who are not covered by the terms of a collective bargaining agreement;

(b) When the labor organization has no jurisdiction in the geographical area where work is being performed;

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(c) Any other circumstance when the terms of the collective bargaining agreement is not enforceable for workers on public improvement projects.

Stat. Auth.: ORS 651.060
Stats. Implemented: ORS 279.342
Hist.: BL 7-1992, f. & cert. ef. 6-11-92; Renumbered from 839-016-0054, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0060

Apprentices

(1) Apprentices will be permitted to work upon a public works project at less than the prevailing rate of wage for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with:

(a) The U.S. Department of Labor, Bureau of Apprenticeship and Training, (BAT); or

(b) A State Apprenticeship Agency recognized by the BAT; or

(c) If a person is employed in probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship Agency to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen in any craft classification must conform to the apprenticeship standards filed with the Oregon Apprenticeship and Training Council for the particular craft or program in which the contractor's or subcontractor's apprentices are registered.

(3) The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage and Hour Division written evidence of the registration of the program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeymen hourly rates) prescribed in that program. The commissioner has prepared a form, **WH-120**, which can be used by contractors or subcontractors in complying with this rule. Use of this form is optional.

(4) Notwithstanding section (1) of this rule, apprentices must be paid the full prevailing rate of wage when the program in which they are registered is located in a state contiguous to Oregon which does not recognize apprentices registered in a program approved by the Oregon State Apprenticeship and Training Council.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 651.060(4)
Stats. Implemented: ORS 279.348
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 7-1994, f. & cert. ef. 11-16-94; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0060, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0065

Trainees

(1) Trainees will not be permitted to work upon a public works project at less than the prevailing rate of wage for the work performed unless they are employed and individually registered in a program which has received prior approval of the U.S. Department of Labor, Bureau of Apprenticeship and Training.

(2) The ratio of trainees to journeymen must not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training.

(3) The contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage and Hour Division written evidence of the certification of the program, the registration of the trainees, and the ratios and wage rates prescribed in that program. The contractor or subcontractor may use form **WH-120** for this purpose. Use of this form is optional.

(4) In the event the Apprenticeship and Training Division withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable prevailing rate of wage for the work performed until an acceptable program is approved.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0065, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0080

Liability to Workers

(1) Any contractor or subcontractor or any surety thereof who fails or refuses to pay at least the prevailing wages and fringe benefits as determined by the Commissioner or any overtime wages as required by ORS 279C.540 is liable to the workers affected for all the unpaid prevailing

wages, including fringe benefits, and unpaid overtime wages.

(2) The contractor or subcontractor or surety thereof, referred to in section (1) of this rule, is also liable to all unpaid workers for an amount equal to the unpaid prevailing wages, including fringe benefits, as liquidated damages.

(3) The contractor or subcontractor or surety thereof, referred to in section (1) of this rule, is also liable to all unpaid workers for an amount equal to the unpaid overtime wages as liquidated damages, except that if the unpaid overtime results from willful falsification of payroll records, these liquidated damages shall be twice the amount of unpaid overtime.

(4) Any public agency which fails to include a provision in the advertisement for bids, the request for bids, the contract specifications, the accepted bid or elsewhere in the contract documents that the contractor and any subcontractor shall comply with ORS 279C.840 shall be jointly and severally liable, with any contractor or subcontractor that had notice of the requirement to comply with ORS 279C.840, to the workers affected for any unpaid minimum wages.

(5) As used in section (4) of this rule, "minimum wages" means the prevailing wage, including fringe benefits, as determined by the Commissioner. "Minimum wages" does not mean overtime wages required by ORS 279C.540 nor liquidated damages referred to in sections (2) and (3) of this rule.

Stat. Auth.: ORS 279 & 651.060

Stats. Implemented: ORS 279.334 & 279.356

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; Renumbered from 839-016-0080, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0085

Contract Ineligibility

(1) Under the following circumstances, the commissioner, in accordance with the Administrative Procedures Act, may determine that for a period not to exceed three years, a contractor, subcontractor or any firm, limited liability company, corporation, partnership or association in which the contractor or subcontractor has a financial interest is ineligible to receive any contract or subcontract for a public work:

(a) The contractor or subcontractor has intentionally failed or refused to pay the prevailing rate of wage to workers employed on public works project as required by ORS 279C.840;

(b) The subcontractor has failed to pay its employees the prevailing rate of wage required by ORS 279C.840 and the contractor has paid the employees on the subcontractor's behalf; or

(c) The contractor or subcontractor has intentionally failed or refused to post the prevailing wage rates as required by ORS 279C.840(4) and these rules.

(2) When the contractor or subcontractor is a corporation, the provisions of section (1) of this rule will apply to any corporate officer or corporate agent who is responsible for the failure or refusal to pay or post the prevailing wage rates.

(3) As used in section (2) of this rule, any corporate officer or corporate agent responsible for the failure to pay or post the prevailing wage rates or for the failure to pay to a subcontractor's employees amounts required by ORS 279C.840 that are paid by the contractor on the subcontractor's behalf includes, but is not limited to, the following individuals when the individuals knew or should have known the amount of the applicable prevailing wages or that such wages must be posted:

(a) The corporate president;

(b) The corporate vice president;

(c) The corporate secretary;

(d) The corporate treasurer;

(e) Any other person acting as an agent of a corporate officer or the corporation.

(4) The Wage and Hour Division will maintain a written list of the names of those contractors, subcontractors and other persons who are ineligible to receive public works contracts and subcontracts. The list will contain the name of contractors, subcontractors and other persons, and the name of any firms, corporations, partnerships or associations in which the contractor, subcontractor or other persons have a financial interest. Except as provided in OAR 839-025-0095, such names will remain on the list for a period of three (3) years from the date such names were first published on the list.

(5) Before placing a name on the ineligible list referred to in section (4) of this rule, the commissioner will serve a notice of intended action upon the contractor or subcontractor in the same manner as service of summons or by certified mail, return receipt requested. The Notice will include:

(a) A reference to ORS 279C.840;

(b) A short and concise statement of the matters which constitute

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intentional failure or refusal to pay or post the prevailing rate of wage;

(c) A statement of the party's right to request a contested case hearing and to be represented by counsel at such hearing, provided that any such request must be received by the commissioner in writing within 20 days of service of the notice;

(d) A statement that the party's name will be published on a list of persons ineligible to receive public works contracts or subcontracts, unless the party requests a contested case hearing as provided in subsection (5)(c) of this rule;

(e) A statement that failure to make written request to the commissioner for a contested case hearing within the time specified will constitute a waiver of the right thereto; and

(f) A statement that if a hearing is requested, the contractor or subcontractor will be given information on procedures and rights as required by ORS 183.413(2).

(6) Upon the failure of the contractor or subcontractor to request a contested case hearing within the time specified, the commissioner or the commissioner's designee will enter an order supporting the bureau's action.

(7) If a contractor or subcontractor makes a timely request for a contested case hearing a hearing will be held in accordance with the Attorney General's Model Rules of Procedure under the Administrative Procedure Act by the commissioner or the commissioner's designee.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0085, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0090

List of Ineligibles

(1) The name of the contractor, subcontractor or other persons and the names of any firm, corporation, partnership or association in which the contractor or subcontractor has a financial interest whom the Commissioner has determined to be ineligible to receive public works contracts shall be published on a list of persons ineligible to receive such contracts or subcontracts.

(2) The list of persons ineligible to receive contracts or subcontracts on public works shall be known as the List of Ineligibles. In addition to names referred to in section (1) of this rule the list shall contain the date the name was placed on the list and the period of time for which they are ineligible.

(3) The List of Ineligibles shall be published quarterly and amended as needed at any time. Such list shall be furnished to the public upon request, and made available to public contracting agencies as published or amended.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.361

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; Renumbered from 839-016-0090, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0095

Removal of Names from List

(1) The names of the contractor, subcontractor or other persons and the names of any firm, corporation, partnership or association in which the contractor, subcontractor or other persons have a financial interest shall remain on the list for a period of three (3) years from the date of publication of such name on the list.

(2) The names referred to in section (1) of this rule shall be removed from the list after three (3) years.

(3) The Commissioner may, for good cause shown, direct the removal of a name from the list before the expiration of three (3) years. If the Commissioner determines good cause has been shown, the Commissioner shall issue an order directing the removal of such name or names.

(4) Contractors, subcontractors or other persons, or any firm, corporation, partnership or association in which the contractor, subcontractor or other persons have a financial interest who desire to be removed from the list before the expiration of three (3) years must show good cause for such removal. Such persons may petition the Commissioner at any time during the period of ineligibility.

(5) In reviewing such petitions, the Commissioner shall consider the following matters:

(a) The past history of the petitioner in taking all necessary measures to prevent or correct violations of statutes or rules;

(b) Prior violations, if any, of statutes or rules;

(c) Magnitude and seriousness of the violation;

(d) Other matters which indicate to the Commissioner that the petitioner is not likely to violate ORS 279C.800 to 279C.870. and these rules in the future.

(6) The Commissioner shall grant or deny the petition.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.361

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; Renumbered from 839-016-0095, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0100

Exemptions

(1) All public works are regulated under ORS 279C.800 to 279C.870 except as follows:

(a) Projects for which the total sum of the contract price does not exceed \$25,000. "Contract price" has the same meaning as that defined in OAR 839-025-0200(5)(a).

(b) Projects regulated under the Davis-Bacon Act (40 U.S.C. 276a). "Projects regulated under the Davis-Bacon Act" do not include projects which would otherwise be subject to that Act but which for any reason are not regulated under it (For example, contracts that are federally funded and therefore subject to the Davis-Bacon Act but the prevailing wage rates, as determined by the U.S. Secretary of Labor, have been omitted);

(c) Contracts of a People's Utility District which are regulated under ORS 261.345.

(d) Projects for which no funds of a public agency are directly or indirectly used.

(A) "Directly used public funds" means any revenue, money or that which can be valued in money derived from a public agency's immediate custody and control for the specific purpose of financing a project. Payment for all or part of a project with public property or other assets constitutes payment with public funds.

(B) "Indirectly used public funds" means that a public agency ultimately bears the cost of all or part of the project, even if a public agency is not paying for the project directly or completing payment at the time it occurs or shortly thereafter. A public agency will "ultimately bear the cost" of all or part of a project in situations including, but not limited to:

(i) Amortizing the costs of construction over the life of a lease and paying these costs with public funds during the course of the lease;

(ii) A public agency subsidizing the costs of construction that would normally be borne by the contractor. A waiver of building development permit fees by a public agency is not direct or indirect use of public funds;

(iii) Using insurance proceeds that belong to a public agency to pay for construction. Insurance proceeds represent "money collected for the custody and control of a public agency" and therefore are public funds, whether the contractor obtains payment directly from the insurance company or the public agency;

(iv) Using or creating a private entity as a conduit for funding a project when the private entity is in fact an alter ego of the public agency; or

(v) Using public agency resources for the purpose of managing the construction project or otherwise serving as a principal source of supervision, coordination or oversight for the project. The use of public agency resources for the design or inspection of one or more components of the project is not direct or indirect use of public funds.

(2) As used in subsection (1)(d) of this rule, "funds of a public agency" do not include funds provided in the form of a government grant to a nonprofit organization, unless the government grant is issued for the purpose of construction.

(3) As used in subsection (1)(d) of this rule, "funds of a public agency" do not include a public agency's election not to collect land rent.

(4) The provisions of ORS 279C.840 and these rules that regulate payment of the prevailing rate of wage do not apply to inmates of the Oregon Department of Corrections assigned to:

(a) A work release program or otherwise working in gainful private employment pursuant to ORS 144.480, relating to prison inmate labor; or

(b) State Parks and Recreation Department projects to improve, maintain and repair buildings and property at state parks and recreation areas pursuant to ORS 390.195(1).

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

Stat. Auth.: ORS 279 & 651.060

Stats. Implemented: ORS 279.357, 390.195(1) & OL Ch. 628 (2001)

Hist.: BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BL 1-1998, f. & cert. ef. 1-5-98; BLI 15-2001, f. & cert. ef. 11-14-01; Renumbered from 839-016-0100, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0150

Definitions

(1) As used in this rule and OAR 839-025-0155, unless the context requires otherwise, the terms used herein will have the same meaning as that given them in OAR 839-025-0004.

(2) Notwithstanding the meaning given it in OAR 839-025-0004(29), the term "worker" does not include an individual whose primary duty con-

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sists of the performance of work that is original and creative in character in a recognized field of artistic endeavor (as contrasted to work which can be produced by an individual endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the individual.

(3) Notwithstanding the meaning of the terms "construction," "reconstruction" and "major renovation" as defined in OAR 839-025-0004(5), (21), and (9), such terms do not include the installation of applied art.

(4) The installation of applied art includes, but is not limited to, the installation of the pictures (including paintings, etchings, drawings and photographs), all hangings, pieces of sculpture, statues and other artistic pieces which are independent unto themselves and are not necessary to the structural integrity of the public work.

(5) Installation work necessary to the structural integrity of a public work includes, but is not limited to, the installation of windows, ceiling tiles, brick and concrete masonry, sheet metal or other fascia materials, siding of any kind, lights, support beams and any item necessary to the construction of the actual public work itself, or to the health and safety of persons who use or will use the public work. The painting of a public work, or any of its parts is considered necessary to the structural integrity of the public work.

(6) Work considered to be "de minimus" means work not regulated under ORS 279C.800 to 279C.870 or these rules.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.363
Hist.: BL 8-1984, f. & ef. 6-21-84; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0150, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0155

Payment of Prevailing Rate of Wage for the Installation of Art on Public Works Projects

(1) Workers engaged in the installation of art necessary to the structural integrity of the public work, as defined in these rules, must be paid no less than the applicable prevailing rate of wage as determined by the Commissioner.

(2) Workers engaged in the installation of applied art, as defined in these rules, are not required to be paid the prevailing rate of wage when such work is the only work in which the worker is engaged while employed on the public work project. Such work is considered de minimus as defined in these rules.

(3) Any artist who meets the definition of an individual in OAR 839-025-0150(2) is not required to be paid the prevailing rate of wage, even when the artist is engaged in the installation of art necessary to the structural integrity of the public work when the art is of the artist's own creation.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.342
Hist.: BL 8-1984, f. & ef. 6-21-84; Renumbered from 839-016-0155, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0200

Fees to Be Paid by Contractor

(1) Every contractor awarded a contract for a public work which is regulated under the Prevailing Wage Rate Law (ORS 279C.800 to 279C.870) must pay a fee to the Prevailing Wage Rate Unit.

(2) The amount of the fee must be one tenth of one percent (.001) of the contract price. However, the fee must be no less than \$100 nor more than \$5,000 regardless of the contract price.

(3) The fee must be paid no later than 10 days following receipt by the contractor of the first progress payment on the contract or 60 days after work on the project has begun, whichever date is earlier.

(4) In order to assist contractors in the proper calculation of the fee, the bureau has prepared a form for this purpose. The form is available, on request, from the Prevailing Wage Rate Unit.

(5) As used in this rule:

(a) "Contract price" means the dollar amount of the contract on the date it was awarded to the contractor and the dollar amount of any subsequent change orders or other adjustments.

(b) "Work on the project" means work performed after the date the contract was awarded and for which the contractor is paid as part of the contract price.

(c) The "date work on the project has begun" means the date the contractor actually starts work on the project or, if the contractor cannot determine the date the contractor actually started working on the project, the date the contracting agency establishes as the date work actually started on the project or, if neither the contractor nor the contracting agency can determine the date the contractor actually started work on the project, the date the contracting agency authorized the contractor to begin work on the project.

(d) "Progress payment" means a partial payment to the contractor by the contracting agency for work performed on the contract.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0200, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0210

Adjustment of Fees

(1) Within 30 days of the final progress payment to the contractor by the contracting agency after completion of the contract, the contractor must determine the final contract price. The contractor must consider all change orders or other adjustments to the contract price in making the determination.

(2) The contractor must calculate the fee in accordance with OAR 839-025-0200(2) and must credit the amount paid pursuant to OAR 839-025-0200(3). The difference, if any, must be determined as follows:

(a) In the case of a reduction of more than \$100 in the amount of the fee, the contractor may submit a request to the bureau for a refund of the difference and the bureau will pay a refund to the contractor or subcontractor;

(b) In the case of an increase of more than \$100 in the amount of the fee, the contractor must pay the difference to the bureau.

(3) Requests for refunds and additional payments must be submitted with sufficient documentation to show how the amount to be refunded or to be paid was calculated. All such requests or payments must be made to the Prevailing Wage Rate Unit within 30 days of the date the final progress payment was made to the contractor by the contracting agency after completion of the contract.

(4) In order to assist contractors in the proper calculation of the fee, the bureau has prepared a form for this purpose. The form is available, on request, from the Prevailing Wage Rate Unit.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0210, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0220

Fees for Contract Without Specific Award Amounts

(1) When the project for a public work is anticipated to equal or exceed \$25,000 but the contract is awarded without stating any specific amount, the contract price for purposes of calculating the fee shall be based on the amount the public agency anticipates to be the guaranteed maximum amount of the project.

(2) When the contract is awarded without stating any specific amount, the fee shall be calculated on the guaranteed maximum amount referred to in section (1) of this rule and the fee is payable pursuant to OAR 839-025-0200.

(3) When the contract is completed, adjustments in the fees shall be calculated and paid or a refund may be requested as provided in OAR 839-025-0210.

(4) When the agency has not determined the guaranteed maximum amount, the agency shall provide to the contractor with a good faith estimate of the contract price. The fee shall be calculated on this estimated amount.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0220, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0230

Special Circumstances/No General Contractors

(1) While the general contractor is normally the party that will pay the required fee, there are circumstances when this may not be the case. When the public contracting agency chooses to act as its own general contractor or when the agency contracts with another to act as the construction manager of a public works project, several parties may be responsible for paying a fee.

(2) The required fee must be paid by the contractor who is awarded the public works contract (See ORS 279C.825). Therefore, when a contracting agency acts as its own general contractor and enters into one or several contracts in connection with a public works project of \$25,000 or more, each contractor shall be required to pay the fee in connection with the contract awarded to the contractor. The fee is required on all contracts, regardless of the contract price of any individual contract, so long as the combined price of all contracts awarded on the project is \$25,000 or more.

(3) Section (2) of this rule is also applicable to the circumstance where the contracting agency contracts with a contractor to act as the general manager of a public works project. The contract for general manager

ADMINISTRATIVE RULES

services is a public works contract for purposes of these rules and a fee is required just as any other public works contract, since the contract would not have been entered into but for the public works project.

(4) When a contracting agency enters into an agreement for construction management services or chooses to act as its own general contractor or construction manager, the contract price for purposes of determining whether the project is regulated under the law shall be the sum of all contracts associated with the project or, if the actual sums are not known at the time work begins, the contract price shall be the guaranteed maximum amount for the project or the agency's good faith estimate of the contract price of the project if there is no guaranteed maximum amount. Under these circumstances, when the guaranteed maximum amount of the project or the agency's estimate of the price of the project meets or exceeds \$25,000, each contractor that enters into a contract with the agency shall be responsible for paying a fee pursuant to OAR 839-025-0200.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0230, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0240

Special Circumstances/Effective Date

(1) Contractors are required to pay a fee on all applicable contracts awarded on or after September 9, 1995. Contracts awarded before that date are not subject to the fee.

(2) When work on a public works project of \$25,000 or more began prior to the effective date and contracts are awarded in connection with the project after the effective date, only those contracts awarded after the effective date are subject to the required fee.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0240, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0300

Generally

No person shall take any action which circumvents the payment of the prevailing wage rate to workers on public works projects.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0300, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0310

Dividing Projects Prohibited

(1) Public contracting agencies must not divide a public works project into more than one project for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

(2) When making a determination of whether the public agency divided a project to avoid compliance with ORS 279C.800 to 279C.870, the commissioner will consider the facts and circumstances in any given situation including, but not limited to, the following matters:

(a) The physical separation of project structures;

(b) Whether a single public works project includes several types of improvements or structures;

(c) The anticipated outcome of the particular improvements or structures the agency plans to fund;

(d) Whether the structures or improvements are similar to one another and combine to form a single, logical entity having an overall purpose or function;

(e) Whether the work on the project is performed in one time period or in several phases as components of a larger entity;

(f) Whether a contractor or subcontractor and their employees are the same or substantially the same throughout the particular project;

(g) The manner in which the public contracting agency and the contractors administer and implement the project;

(h) Other relevant matters as may arise in any particular case.

(3) When the commissioner determines that a public contracting agency has divided a public works project for the purpose of avoiding compliance with ORS 279C.800 to 279C.870, the commissioner will issue a written order compelling compliance with ORS 279C.800 to 279C.870. The order will offer the public contracting agency the opportunity to contest the order pursuant to OAR 839-050-0000 through 839-050-0420.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0310, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0320

Payment of Prevailing Wage by Persons Other than Contractors or Subcontractors Prohibited

(1) Except as provided herein, no person, other than the contractor or subcontractor, shall pay or contribute any portion of the prevailing rate of wage specified in the contract to workers employed on the public works contract.

(2) Section (1) of this rule does not apply to payments to workers who are enrolled in government-subsidized training or retraining programs.

(3) For purposes of this rule, a person pays or contributes to the payment of the prevailing rate of wage when a contractor or subcontractor receives monies pursuant to a program, plan or other agreement that includes a provision that contributions by members of a labor organization of a part of their wages will be made to the labor organization for the purpose of paying contractors or subcontractors the difference in the wage rate negotiated under the collective bargaining agreement and the wage rate used by the contractor or subcontractor in obtaining a contract. However, a person does not pay or contribute to the payment of the prevailing rate of wage when the contractor or subcontractor receives monies pursuant to such program plan or agreement if the collectively bargained wage rate exceeded the prevailing rate of wage in effect at the time the contractor or subcontractor made a bid on a contract.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0320, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0330

Wage Averaging Prohibited

(1) No contractor or subcontractor shall reduce a worker's regular rate of pay for work on projects not subject to the Prevailing Wage Rate Law (ORS 279C.800 to 279C.870) when the reduction in pay has the effect of the worker not receiving the prevailing rate of wage for work performed on the public works project.

(2) As used in this rule, "regular rate" has the same meaning as that defined in OAR 839-020-0030(2)(b).

(3) When making a determination of whether a contractor or subcontractor has reduced a worker's regular rate in violation of section (1) of this rule, the bureau shall consider:

(a) The timing of the wage rate reduction;

(b) Whether the wage rate reduction was made pursuant to an established plan;

(c) Whether the wage rate reduction is applied equally to all workers in similar job classifications;

(d) Whether the wage rate reductions are applied to workers employed on public works projects but not to workers employed only on projects not subject to the Prevailing Wage Rate Law (ORS 279C.800 to 279C.870);

(e) Other considerations as the facts and circumstances of a particular matter may reveal.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0330, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0340

Other Circumventions

(1) A contracting agency circumvents the payment of the prevailing rate of wage when it knowingly or intentionally:

(a) Fails or refuses to include a provision stating the existing prevailing rate of wage in the contract specifications in violation of ORS 279C.830;

(b) Fails or refuses to include a provision in the contract that workers on the contract shall be paid no less than the specified minimum hourly rate of wage in violation of ORS 279C.830;

(c) Divides a project for the purpose of avoiding compliance with ORS 279C.800 to 279C.870 in violation of ORS 279C.810(2).

(d) Awards a contract to a contractor whose name appears on the list of ineligible maintained pursuant to ORS 279C.860.

(2) The "specified minimum hourly rate of wage" as used in subsection (1)(b) of this rule means the applicable prevailing rate of wage.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0340, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

ADMINISTRATIVE RULES

839-025-0500

Definitions

As used in OAR 839-025-0500 to 839-025-0540, a person acts knowingly when the person has actual knowledge of a thing to be done or omitted or should have known the thing to be done or omitted. A person should have known the thing to be done or omitted if the person has knowledge of facts or circumstances that would place the person on reasonably diligent inquiry. A person acts knowingly if the person has the means to be informed but elects not to do so. For purposes of the rule, the contractor, subcontractor and contracting agency are presumed to know the circumstances of the public works construction project.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0500, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0510

Violations Separate and Distinct

Each violation is separate and distinct. In the case of continuing violations, each day's continuance is a separate and distinct violation.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0510, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0520

Criteria to Determine Civil Penalty

(1) The commissioner shall consider the following mitigating and aggravating circumstances when determining the amount of any civil penalty to be assessed against a contractor, subcontractor or contracting agency and shall cite those the commissioner finds to be applicable:

(a) The actions of the contractor, subcontractor or contracting agency in responding to previous violations of statutes and rules;

(b) Prior violations, if any, of statutes and rules;

(c) The opportunity and degree of difficulty to comply;

(d) The magnitude and seriousness of the violation;

(e) Whether the contractor, subcontractor or contracting agency knew or should have known of the violation.

(2) It shall be the responsibility of the contractor, subcontractor or contracting agency to provide the commissioner with evidence of any mitigating circumstances set out in section (1) of this rule.

(3) In arriving at the actual amount of the civil penalty, the commissioner shall consider the amount of the underpayment of wages, if any, in violation of any statute or rule.

(4) Notwithstanding any other section of this rule, the commissioner shall consider all mitigating circumstances presented by the contractor, subcontractor or contracting agency for the purpose of reducing the amount of the civil penalty to be assessed.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0520, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0530

Violations for Which a Civil Penalty May Be Assessed

(1) The commissioner may assess a civil penalty for each violation of any provision of the Prevailing Wage Rate Law (ORS 279C.800 to 279C.870) and for each violation of any provision of the administrative rules adopted under the Prevailing Wage Rate Law.

(2) Civil penalties may be assessed against any contractor, subcontractor or contracting agency regulated under the Prevailing Wage Rate Law and are in addition to, not in lieu of, any other penalty prescribed by law.

(3) The commissioner may assess a civil penalty against a contractor or subcontractor for any of the following violations:

(a) Failure to pay the prevailing rate of wage in violation of ORS 279C.840;

(b) Failure to post the applicable prevailing wage rates in violation of ORS 279C.840(4);

(c) Failure to post the notice describing the health and welfare or pension plans in violation of ORS 279C.840(5);

(d) Failure to file certified statements in violation of ORS 279C.845;

(e) Filing inaccurate or incomplete certified statements in violation of ORS 279C.845;

(f) Paying the prevailing rate of wage in violation of ORS 279C.840(6);

(g) Reducing an employee's pay in violation of ORS 279C.840(7);

(h) Taking action to circumvent the payment of the prevailing wage,

other than subsections (e) and (f) of this section, in violation of ORS 279C.840(7);

(i) Failure to submit reports and returns in violation of ORS 279C.815(3);

(j) Failure to certify the accuracy of reports and returns in violation of ORS 279C.815(3);

(k) Failure to timely pay the fee required by ORS 279C.825;

(l) Receiving a public works contract or subcontract while on the List of Ineligibles in violation of ORS 279C.860.

(4) The commissioner may assess a civil penalty against a public contracting agency for any of the following violations:

(a) Failure to include a contract provision stating that workers must be paid the prevailing rate of wage in violation of ORS 279C.830(1);

(b) Failure to include a contract provision stating that a fee is to be paid to the commissioner in violation of ORS 279C.830(2);

(c) Failure to include in the contract specifications a provision stating the existing prevailing wage rate in violation of ORS 279C.830(1);

(d) Failure to include in the contract specifications a provision stating that a fee is required to be paid to the commissioner in violation of ORS 279C.830(2);

(e) Failure to notify the commissioner when a contract is awarded in violation of ORS 279C.835;

(f) Dividing a public works project in violation of ORS 279C.810(2);

(g) Failure to include a copy of the disclosure of first-tier subcontractors with the Notice of Award in violation of ORS 279C.835.

Stat. Auth.: ORS 279 & 651.060

Stats. Implemented: ORS 279.370

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; BL 1-1998, f. & cert. ef. 1-5-98; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0530, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0540

Schedule of Civil Penalties

(1) The civil penalty for any one violation will not exceed \$5,000. The actual amount of the civil penalty will depend on all the facts and on any mitigating and aggravating circumstances.

(2) For purposes of this rule "repeated violations" means violations of a provision of law or rule which has been violated on more than one project within two years of the date of the most recent violation.

(3) Notwithstanding any other section of this rule, when the commissioner determines to assess a civil penalty for a violation of ORS 279C.840 regarding the payment of the prevailing rate of wage, the minimum civil penalty will be calculated as follows:

(a) An equal amount of the unpaid wages or \$1,000, whichever is less, for the first violation;

(b) Two times the amount of the unpaid wages or \$3,000, whichever is less, for the first repeated violation;

(c) Three times the amount of the unpaid wages or \$5,000, whichever is less, for second and subsequent repeated violations.

(4) Notwithstanding any other section of this rule, when the commissioner determines to assess a civil penalty for violations of ORS 279C.825, OAR 839-025-0200, or 839-025-0220 regarding fees to be paid by the contractor, the minimum civil penalty to be assessed will be calculated as follows:

(a) An equal amount of the unpaid fee or \$1,000, whichever is greater, for the first violation;

(b) Two times the amount of the unpaid fee or \$3,000, whichever is greater, for the second violation;

(c) Three times the amount of the unpaid fee or \$5,000, whichever is greater, for the third and subsequent violations.

(5) The civil penalty for all other violations will be set in accordance with the determinations and considerations referred to OAR 839-025-0520.

(6) The civil penalties set out in this rule are in addition to any other penalty assessed or imposed by law or rule.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0540, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

839-025-0700

Prevailing Wage Rate Determination/Amendments to Determination

(1)(a) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in a publication of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon dated July 1, 2004* are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2005, and the effective date of the applicable special wage determination:

ADMINISTRATIVE RULES

(b) Marine Rates for Public Works Contracts in Oregon (effective December 13, 2004).

(2) Copies of Prevailing Wage Rates on Public Works Contracts in Oregon dated January 1, 2005, and special wage determination is available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (503) 731-4723.

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

Stat. Auth.: ORS 279.359

Stats. Implemented: ORS.279.359

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05

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 determination(s) are the prevailing rates of wage for workers upon said public works project(s) for the period(s) of time specified:

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

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

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

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

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

(f) *Special Prevailing Wage Rate Determination for Residential Project, City Center Apartments, Project #2004-02*, dated April 22, 2004 for the period of May 1, 2004 through March 31, 2005 was repealed on November 1, 2004.

(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 279.359

Stats. Implemented: ORS 279.359

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

Department of Administrative Services Chapter 125

Adm. Order No.: DAS 2-2005(Temp)

Filed with Sec. of State: 2-24-2005

Certified to be Effective: 2-24-05 thru 5-29-05

Notice Publication Date:

Rules Adopted: 125-145-0130

Rules Amended: 125-145-0010, 125-145-0020, 125-145-0030, 125-145-0040, 125-145-0045, 125-145-0060, 125-145-0080, 125-145-0090, 125-145-0100, 125-145-0105

Rules Suspended: 125-145-0050, 125-145-0110, 125-145-0120, 125-145-0010(T), 125-145-0020(T), 125-145-0030(T), 125-145-0040(T), 125-145-0045(T), 125-145-0060(T), 125-145-0080(T), 125-145-0090(T), 125-145-0100(T), 125-145-0105(T)

Subject: Amendments to Administrative Rules OAR 125-145-0010 to 125-145-0120, are to simplify, clarify and correct the rules implemented on December 1, 2004, to allow the processing of property claims that resulted from the passing of Ballot Measure 37 on November 2, 2004. The adoption of OAR 125-145-0130 provides for the reevaluation of Claims previously submitted under the rules effective on December 1, 2004, and prior to the effective date of this current rule.

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

125-145-0010

Purpose

The purpose of OAR chapter 125, division 145, is to establish procedures for filing and reviewing Claims against the State of Oregon under Measure 37.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2005)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05

125-145-0020

Definitions

The following definitions apply to this division:

(1) **Agency** means any state officer, board, commission, council, department or Division of state government, whose costs are paid wholly or in part from funds held in the State Treasury, except the Legislative Assembly, the courts and their officers and committees, and except the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(2) **Claim** means a written demand for compensation under Measure 37.

(3) **Claimant** means the owner who submitted a Claim, or the owner on whose behalf a Claim was submitted.

(4) **Department** means the Department of Administrative Services.

(5) **Land Use Regulation** has the meaning provided in ORS 197 (Measure 37, 2005).

(6) **Lot** means a single unit of land that is created by a subdivision of land as defined in ORS 92.010.

(7) **Measure 37** means Oregon Laws 2005, Chapter 1.

(8) **Parcel** means a single unit of land that is created by a partitioning of land as defined in ORS 92.010 and ORS 215.010.

(9) **Property** means the Lot or Parcel that is or includes the private real property that is the subject of a Claim.

(10) **Reduction in Fair Market Value** means the difference in the fair market value of the Property resulting from enactment or enforcement of the Land Use Regulation(s) identified in the Claim as of the date the Claim is submitted to the Department.

(11) **Registry** means the database of information about Claims required by OAR 125-145-0060.

(12) **Regulating Entity** means an Agency that has enacted or enforced, or has authority to remove, modify or not to apply, the Land Use Regulation(s) identified in the Claim.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2005)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05

ADMINISTRATIVE RULES

125-145-0030

Submitting a Claim

(1) Claims must be submitted by an owner or an authorized agent on behalf of an owner. A Claim must contain sufficient information, as described in OAR 125-145-0040, for review of the Claim by the Department or a Regulating Entity and may be submitted on a form available from the Department at the address provided in this rule or from the Department's website.

(2) Claims must be submitted to the Department at: 1225 Ferry Street SE, U160, Salem, OR 97310-4292. Claims shall not be submitted by facsimile or electronically.

(3) A Claim is made under Section 4 of Measure 37 on the date a Claim is received by the Department.

(4) The Department may send written notice to the person who submitted the Claim noting the date that Claim was received by the Department, the Regulating Entity or Entities reviewing the Claim and the recipients of any notices sent to third parties under OAR 125-145-0080.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2005)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05

125-145-0040

Contents of a Claim

A Claim should contain the information described in this rule. A Claim that does not contain this information may be denied as provided in OAR 125-145-0090.

(1) The name, mailing address, and telephone number of the Claimant, and the person submitting the Claim if different.

(2) The name, mailing address and telephone number of every owner of the Property, including but not limited to:

(a) Every lessee and lessor of the Property;

(b) Every person or entity holding a lien against, or a security interest in, the Property;

(c) Every person or entity holding a future, contingent, or other interest of any kind in the Property.

(3) A description of the interest in the Property held by each owner listed.

(4) The location, including a street address, if applicable, of the Property, including the city or county in which it is located, and the legal description of the Property, including reference to the township, range, section and tax lot number in which it is located.

(5) Evidence that the Claimant is an owner of the Property, including the date of acquisition by the Claimant, date of acquisition by any family member of the Claimant if the Claim is based on ownership by a family member and, if so, the chain of title from the family member to the Claimant, and the nature and scope of the Claimant's ownership.

(6) Evidence or information describing any encroachments, easements, Covenants Conditions and Restrictions, and any other recorded or unrecorded interests applicable to the Property.

(7) Evidence or information describing any federal, state and local restrictions on the Property, including all applicable zoning, comprehensive plan and other land use and development regulations.

(8) An explanation, including a citation to each Land Use Regulation on which the Claim is based and evidence or information that demonstrates the following:

(a) The manner in which each cited Land Use Regulation restricts the use of the Property, compared with how the owner, or family member, if applicable, was permitted to use the Property under Land Use Regulations in effect at the time the owner, or family member, if applicable, acquired the Property; and

(b) The amount by which the restriction in use imposed by each cited Land Use Regulation has caused a Reduction in the Fair Market Value of the Property.

(9) Written permission from the Claimant and all other owners with a right to restrict access, authorizing the Department, the Regulating Entity and their officers, employees, agents and contractors as necessary to enter the Property to appraise it and to verify information in the Claim.

(10)(a) A statement acknowledged by signature of the Claimant, or the person submitting the claim if other than the Claimant, as follows: "The information contained in this Claim is true and correct to the best of my knowledge. I understand it is a crime under ORS 162.085 to certify the truth of a statement when I know the statement is not true. This offense is a Class B misdemeanor and is punishable by a jail sentence of up to six months, a fine of up to \$2,500, or both."

(b) If the Claim is submitted by a person other than the Claimant, a written statement by the claimant authorizing the person submitting the Claim to do so on the Claimant's behalf.

(11) Evidence and information that may be submitted to address the requirements of this section include, but are not limited, to the following: the most recent tax assessor's maps; title reports; appraisal reports by certified appraisers; deeds; Covenants, Conditions & Restrictions; and affidavits.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2005)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05

125-145-0045

Additional Information

In addition to the information described in OAR 125-145-0040, the Department and Regulating Entity may consider additional information regardless of its inclusion in a Claim. Such additional information may include but is not limited to the following:

(1) An appraisal report of the Property prepared by a certified appraiser that addresses the Reduction in Fair Market Value of the Property resulting from enactment or enforcement of the cited Land Use Regulation(s) as of the date the Claim was filed;

(2) Information about any Land Use Regulation(s) on any owner's tax status, including without limitation any property tax deferrals or tax reductions related to the Land Use Regulation(s) cited in the claim;

(3) Information about any Land Use Regulation in effect at the time the Claimant, or Claimant's family member if applicable, acquired the property explaining how the use that is now not permitted by any Land Use regulation described in OAR 125-145-0040(7) was permitted at the time the owner acquired the property;

(4) Names and addresses of owners of all real property located within 100 feet of the Property if the Property is located in whole or in part in an urban growth boundary, 250 feet of the Property if the Property is located outside an urban growth boundary and not within a farm or forest zone, and 750 feet of the Property if the Property is located in a farm or forest zone.

(5) Information about the Property including but not limited to its location, topography, soil types, vegetation or other natural resources or structures located on the property.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2005)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05

125-145-0050

Review for Completeness

(1) The Department shall review each submitted Claim to determine whether it is a Complete Claim. The Department shall make its determination and notify in writing the person submitting the Claim of its conclusion.

(2) If the Department determines that a submitted Claim is not a Complete Claim, it shall notify in writing the person who submitted the Claim. The written notice shall specify the material or information missing from the Claim, and shall state that, due to the deficiencies, the Claim is not a Complete Claim.

(3) A determination by the Department that a submitted Claim is a Complete Claim is subject to further review under subsection (5) of this rule. Unless the Regulating Entity issues notice under subsection (5)(b) within 45 days of the notice issued by the Department under subsection (4)(c) of this rule, the Claim is deemed a Complete Claim.

(4) If the Department determines a submitted Claim is a Complete Claim, it shall:

(a) Enter information about the Complete Claim in the Registry;

(b) Forward copies of the Complete Claim to the Regulating Entity or Entities;

(c) Send a written notice to the person who submitted the Complete Claim noting:

(A) That the Claim is a Complete Claim, and therefore was filed on the date it was submitted; and

(B) Information about the remainder of the review process.

(5) If a Claim that the Department determines is a Complete Claim is forwarded to a Regulating Entity and the Regulating Entity determines that the Claim is not a Complete Claim, the Regulating Entity shall:

(a) Return the Claim to the Department explaining why the Claim is not a Complete Claim; and

(b) Send written notice to the person who submitted the Claim explaining why the Claim is not a Complete Claim and notifying the per-

ADMINISTRATIVE RULES

son who submitted the Claim to resubmit the Claim to the Department as provided in OAR 125-145-0030.

Stat. Auth.: ORS 293.295 - 293.515
Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; Suspended by DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05

125-145-0060

Registry of Claims

The Department shall maintain a Registry of Claims. The Registry shall be accessible to the public electronically and at the location described in OAR 125-145-0030. The Registry shall be the means for providing public notice of Claims filed. Entry of information about a Claim in the Registry provides public notice that the Claim was filed and begins the comment period for third parties as described in OAR 125-145-0080. The registry shall contain at least the following information about each Claim as it becomes available:

- (1) The name of the Claimant, and the name of the person submitting the Claim, if different;
 - (2) The location of the Property, including the county and city in which it is located, street address and reference to its township, range, section and tax lot number;
 - (3) The amount of Reduction in Fair Market Value alleged in the Claim;
 - (4) The Land Use Regulation alleged to restrict the use of the Property;
 - (5) The date the Complete Claim was filed;
 - (6) The date information about the Claim was entered into the Registry;
 - (7) The disposition of the Claim, including whether granted or denied, and whether compensation was paid or whether the cited Land Use Regulation(s) was modified, removed or not applied;
 - (8) Additional information deemed appropriate by the Department.
- Stat. Auth.: ORS 293.295 - 293.515
Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2005)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05

125-145-0080

Third Party Participation

- (1) The Department shall mail written notice of a Claim to any person who is an owner of record of real property located within 100 feet of the Property, if the Property is located in whole or in part in an urban growth boundary, 250 feet of the Property if the Property is located outside an urban growth boundary and not within a farm or forest zone, and 750 feet of the Property if the Property is located in a farm or forest zone, and to neighborhood or community organization recognized by the Department or Regulating Entity and whose boundaries include the site.
- (2) Any person receiving notice under this rule, or any other person, may submit written comments, evidence and information addressing any aspect of the Claim.
- (3) Comments, evidence and information from third parties must be submitted within ten (10) days of the date the notice under this rule is sent or information about the Claim first appeared in the Registry, whichever is later, and must be submitted to the location and in the manner described in OAR 125-145-0030. Comments, evidence and information will be submitted in a timely fashion if either postmarked on the tenth (10) day or actually delivered to the Department by the close of business on the tenth (10) day.

Stat. Auth.: ORS 293.295 - 293.515
Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2005)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05

125-145-0090

Department Review and Decision Process, Forwarding Claim to Regulating Entities

- (1) When a Claim is wholly based on Land Use Regulation(s) for which there is no Regulating Entity, the Department shall be the Regulating Entity for purposes of carrying out the process described in OAR 125-145-0100.
- (2) Upon receipt of a Claim that is based in whole or in part on Land Use Regulation(s) for which there is a Regulating Entity, the Department shall forward the Claim to the Regulating Entity. When a Claim alleges that Land Use Regulations of multiple Regulating Entities restrict the use of the Property, the Department shall consult with all the Regulating Entities and may appoint a Lead Regulating Entity to issue the final decision required by OAR 125-145-0100. Each Regulating Entity shall provide the Lead

Regulating Entity with a staff report addressing at least the issues listed in OAR 125-145-0100(3) with regard to its Land Use Regulation cited in the Claim.

(3) Upon review of the Claim, if the Department or the Regulating Entity determines that it lacks sufficient information to evaluate the Claim, the Department or Regulating Entity may notify in writing the person who submitted the Claim. The written notice shall specify the material or information that would enable the Department or Regulating Entity to evaluate the claim, and shall provide a time certain for Claimant, or the person who submitted the Claim on Claimant's behalf, to submit the material or information. Failure to submit the information requested by the Department or Regulating Entity within the time specified in the notice may result in denial of a Claim.

(4) The Department may issue the final order itself or jointly with the Regulating Entity, or it may authorize a Regulating Entity to issue a final order if, after consulting with the Regulating Entity as required by OAR 125-145-0100(6), the final order modifies, removes or does not apply the Land Use Regulation(s) on which the Claim is based.

Stat. Auth.: ORS 293.295 - 293.515
Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2005)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05

125-145-0100

Regulating Entity Review and Decision Process

(1) A Regulating Entity that receives a claim from the Department, shall issue a staff report addressing at least the issues listed in subsection (2) of this section of this section. The staff report shall be mailed to the Claimant. The person who submitted the Claim, if different, and any third parties who submitted comments under OAR 125-145-0080, and shall be mailed or otherwise delivered to the Department and other Regulating Entities, if any.

(2) The staff report shall address the following issues:

- (a) Whether the Claim was timely filed under Section 5 of Measure 37;
- (b) Whether the Claimant is an owner under Section 11(c) of Measure 37;
- (c) Whether the Claimant's request for compensation is based on the prior ownership of a family member under Section 11(A) of Measure 37;
- (d) Whether any of the Land Use Regulations relied on in the Claim are exempt under Section 3 of Measure 37;
- (e) Whether any of the Land Use Regulations relied on in the Claim restricted the use of the property permitted at the time the owner or family member, if applicable, acquired the Property;
- (f) Whether any of the Land Use Regulations relied on in the Claim has the effect of reducing the fair market value of the property and the amount of any such reduction;
- (g) Any other issue relevant to evaluation of the Claim, including without limitation the effect of any other land use regulation or other restriction on use of the Property; and
- (h) The Regulating Entity's conclusions and recommendation for just compensation or to modify, remove or not apply any of the Land Use Regulation relied on in the Claim to allow a use permitted at the time the owner acquired the property.

(3) The Claimant or the Claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 may submit comments, evidence and information in response to the staff report. Such response must be filed no more than ten (10) days after the date the staff report is mailed to the Claimant and any third parties, at the location and in the manner described in OAR 125-145-0030. Such responses will be submitted in a timely fashion if either postmarked on the tenth (10) day, or actually delivered to the Department by the close of business on the tenth (10) day.

(4) The staff of the Regulating Entity shall issue a revised report following receipt of any submissions under subsection (3) of this rule.

(5) The Regulating Entity may recommend approval or denial of a claim based on the revised staff report and any comments, evidence and information submitted to the Department or the Regulating Entity.

(6) The Regulating Entity may issue a final order jointly with the Department, or the Regulating Entity may issue a final order after consultation with the Department if the decision is to modify, remove or not apply Land Use Regulation(s).

Stat. Auth.: ORS 293.295 - 293.515
Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2005)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05

ADMINISTRATIVE RULES

125-145-0105

The Record for Final Administrative Decisions on a Claim

Final administrative decisions approving or denying a Claim shall be based on a written record that includes the following, if available:

- (1) The Claim;
- (2) The contents of the Registry as to the Claim;
- (3) Comments, evidence and information properly submitted by or on behalf of the Claimant or third parties;
- (4) Staff reports, evidence and information submitted by the Department and the Regulating Entity;
- (5) Response and rebuttal properly submitted by or on behalf of the Claimant or third parties, and;
- (6) Final decisions on the Claim by a Regulating Entity or the Department as provided in OAR 125-145-0090 and 125-145-0100.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & OL 2005, (Measure 37, 2005)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05

125-145-0110

Multiple Regulating Entities

When a Complete Claim alleges that Land Use Regulations of multiple Regulating Entities restrict the use of the Property, the Department shall consult with all the Regulating Entities and may appoint a Lead Regulating Entity to issue the final decision required by OAR 125-145-0100. Each Regulating Entity shall provide the Lead Regulating Entity with a staff report addressing at least the issues listed in OAR 125-145-0100(3) and (4) with regard to its Land Use Regulation cited in the Claim.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; Suspended by DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05

125-145-0120

No Regulating Entity

When a Complete Claim cites a Land Use Regulation for which there is no Regulating Entity, the Department shall carry out the duties and issue the final decision required by OAR 125-145-0100.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; Suspended by DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05

125-145-0130

Reevaluation of Previous Claims

The Department, on its own or upon request of Claimant, may review any Measure 37 Claim that was submitted to the Department on and after the effective date of Measure 37 and before the effective date of this rule that the Department or a Regulating Entity determined was not a Complete Claim.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2005)

Hist.: DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05

Department of Agriculture Chapter 603

Adm. Order No.: DOA 11-2005

Filed with Sec. of State: 2-17-2005

Certified to be Effective: 2-17-05

Notice Publication Date: 1-1-05

Rules Amended: 603-011-0610, 603-011-0620, 603-011-0630

Subject: The proposed amendments reflect house keeping changes recommended by the Trichomoniasis Advisory Committee to increase the effectiveness of the Trichomoniasis Control Program by increasing the number of negative tests required to remove bulls from quarantine in an infected herd. It also gives more decision-making authority to the state veterinarian to determine disease exposure of other cattle, and redefines potentially infected herds. Trichomoniasis is a cattle reproductive disease.

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

603-011-0610

Definitions

(1) "Bovine trichomoniasis" is a sexually transmitted disease of cattle caused by the parasitic protozoan organism *Tritrichomonas fetus*.

(2) "The Department" is the Oregon Department of Agriculture (ODA).

(3) "Virgin bull" is a sexually intact male bovine less than 12 months of age or a sexually intact male bovine between 12 and 24 months that is certified by the owner/manager as having had no potential breeding contact with females.

(4) "Exposed herds" are cattle herds which have had, within twelve months, direct commingling or cross fence contact with test-positive herd during a time of potential breeding activity.

(5) "Permanent Identification" is a steel alphanumeric ear tag provided as official identification to accredited veterinarians, breed registry tattoos, or other means of identification established by the Department after review by the Trichomoniasis Advisory Panel.

(6) "Herd" is a group of cattle that is managed as a separate unit and not mixed with other cattle under the same ownership.

(7) "Test positive herd" is a defined herd of cattle in which a diagnosis of trichomoniasis has been made by a certified, licensed veterinarian.

Stat. Auth.: ORS 591 & 596

Stats. Implemented: ORS 596.392

Hist.: DOA 9-2000, f. & cert. ef. 4-4-00; DOA 11-2005, f. & cert. ef. 2-17-05

603-011-0620

Procedures

(1) The Department shall establish a Bovine Trichomoniasis Advisory Panel, whose membership shall be:

(a) Five voting members who are representatives of the cattle industry, recommended by the Animal Health Committee of the Oregon Cattlemen's Association; and

(b) Four non-voting advisory members who are: the OSU Extension Veterinarian, two practicing veterinarians appointed by the Advisory Panel, and one representative of the office of the ODA State Veterinarian.

(2) Duties of the Advisory Board shall be to:

(a) Advise the Department on management of issues related to the program; and

(b) Advise the Department on preferred policies and processes for resolution of disputes related to the program.

(3) Certified veterinarians, as described in 603-011-0630, must report a positive test result of *Tritrichomonas fetus* to the Department on a form supplied by the Department within 48 hours of determining the result.

(4) In response to a positive bovine trichomoniasis test the Department shall:

(a) Conduct an investigation to identify herds that were potentially exposed to the infected herd.

(b) Require that any further bovine trichomoniasis testing be performed by a certified person, and accept the results of a retest by a certified person, if the original test was performed by a non-certified person; and

(c) Require permanent identification and testing of all bulls, excepting virgin bulls, in the test-positive herd and exposed herds.

(5) All bulls in herds required to be tested must be withdrawn from breeding contact and tested between 10 and 90 days after withdrawal.

(6) All bulls in test-positive herds must each have two (three are recommended) consecutive negative test results with each test event separated by at least seven days, after initial diagnosis is made. Bulls that have a positive test result shall be considered infected and be handled as described in 603-011-0620(7).

(7) Test-positive bulls shall be held under quarantine separate and apart from other cattle or shall comply with one of the following:

(a) Test-positive bulls may be retested and, if found negative on three consecutive tests that are separated by at least seven days, may be considered test-negative and released from quarantine; or

(b) Test-positive bulls moving into feeding channels shall be castrated before moving from the ranch; or

(c) Test-positive bulls moving out of the infected herd into commercial slaughter-marketing channels shall be identified with an "S" brand applied to both sides of the tailhead or a letter "S" ear punch applied to the middle of both ears and shall move only to slaughter under authority of a VS Form 1-27 Permit for Movement of Restricted Animals; or

(d) Test-positive bulls moving out of the infected herd directly to slaughter shall do so with:

(A) Prior notification of the State Veterinarian; and

(B) Record of their permanent identification on the Brand Inspection form under which authority they move.

(8) Failure to comply with the above provisions for response to a positive bovine trichomoniasis test shall result in quarantine of all cattle in the non-compliant herd under provisions of ORS 596.392(4).

(9) The Department may waive the mandatory testing and quarantine provisions of this rule if:

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(a) The owner or manager demonstrates that a herd program for control of bovine trichomoniasis which the Department determines, after consultation with the Advisory Panel, to be adequate under the circumstances, is in place and operational at time of diagnosis; or

(b) The owners or managers of the test positive herd and of all exposed herds agree to not test, or agree to pursue a control program of their own design, and the Department determines that such action is adequate under the circumstances.

Stat. Auth.: ORS 591 & 596
Stats. Implemented: ORS 596.392
Hist.: DOA 9-2000, f. & cert. ef. 4-4-00; DOA 11-2005, f. & cert. ef. 2-17-05

603-011-0630

Certification for Testing and Diagnosis

(1) All persons engaged in testing and diagnosis for bovine trichomoniasis shall be certified by the Department after having completed an appropriate training program.

(2) Applicants for certification must meet the following criteria:

(a) All applicants for certification in specimen collection must hold a valid license to practice veterinary medicine in Oregon; and

(b) All applicants for certification in handling, culture, and diagnostic techniques must pass a qualification test which includes laboratory techniques related to trichomoniasis diagnostics and identification of certifications shall be subject to periodic review and check testing at intervals of no more than five years. The Department shall determine time periods between check tests and recertification depending on availability of new diagnostic techniques.

Stat. Auth.: ORS 561 & 596
Stats. Implemented: ORS 596.392
Hist.: DOA 9-2000, f. & cert. ef. 4-4-00; DOA 11-2005, f. & cert. ef. 2-17-05

Adm. Order No.: DOA 12-2005

Filed with Sec. of State: 3-11-2005

Certified to be Effective: 3-11-05

Notice Publication Date: 2-1-05

Rules Adopted: 603-051-1050, 603-051-1051, 603-051-1052, 603-051-1053, 603-051-1054

Rules Repealed: 603-052-0348

Subject: White rot of *Allium* is now established in Crook, Deschutes and Jefferson counties. This renders the quarantine aspects of the white rot control area order (603-052-0348) for the counties invalid. However, growers are still producing *Allium* seed that must be inspected and certified as free-from white rot in order to meet their customers' needs. The Department is repealing the control area order and replacing it with a voluntary inspection and certification program for *Allium* seed.

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

603-051-1050

Declaration of Policy

Certification of agricultural products, such as *Allium* seed is a function of the Department of Agriculture ORS 632.940. Participation by *Allium* seed companies and seed growers in the certification program shall be voluntary. These regulations may be reviewed annually by the Department and Program participants.

Stat. Auth.: ORS 632.900 - 632.990, 570.305 & 561.990
Stats. Implemented: ORS 632.940
Hist.: DOA 12-2005, f. & cert. ef. 3-11-05

603-051-1051

Definitions

As used in OAR 603-051-1050 to 603-051-1054, unless the context requires otherwise:

(1) "Department" means the Oregon Department of Agriculture.

(2) "*Allium*" refers to *Allium cepa*, *Allium sativum*, *Allium fistulosum* and *Allium ampeloprasum* for the purposes of this program.

(3) "*Allium* seed" refers to cloves and bulbs and the plants that form them. The seed harvested from such plantings are intended for use as vegetative seed for either future seed crops or for commercial plantings. Also included are any *Allium* plants grown from true seed to be harvested for vegetative bulbs and or cloves to be used as vegetative seed.

(4) "White rot" refers to the *Allium* disease incited by the fungal pathogen *Sclerotium cepivorum*.

(5) "Sclerotia" means the reproductive propagules of *Sclerotium cepivorum*.

(6) "Infested" means soil, fields, seedlots, boxes or equipment contaminated with sclerotia.

(7) "Infected" means *Allium* plants in which the pathogen is actively growing and decaying roots, cloves or bulb.

(8) "Field unit" means a planting of *Allium* separated from other *Allium* plantings by at least 20 feet. Certifiable field units may be planted from identical seed sources. Field units are certifiable only if planted with certified seed.

(9) "Certified seed" means seed that has been officially inspected and found to be free of white rot.

Stat. Auth.: ORS 632.900 - 632.990, 570.305 & 561.990
Stats. Implemented: ORS 632.940
Hist.: DOA 12-2005, f. & cert. ef. 3-11-05

603-051-1052

Requirements and Conditions for Certification

Certification by the Department shall not imply or be construed as any warranty of the Department or their employees as to the condition of the *Allium* seed. The following conditions shall be met in order to qualify for consideration of certification of vegetative *Allium* seed.

(1) The applicant for certification shall be responsible for the selection of the location and the proper maintenance of all plantings being grown. The applicant shall also be responsible for maintaining the identity of all *Allium* seed lots planted.

(2) Any field unit entered in this certification program shall be kept in a thrifty growing condition and free of plant pests. If in the judgment of the Department there is too much other disease present, or other conditions that preclude easily distinguishing plants with white rot symptoms from plants not infected with white rot, then the field unit will be deemed incapable of being certified.

(3) Plants growing in the field unit must be discernibly free of white rot to qualify for certification. Any plant or plants within the field unit found with white rot will disqualify the entire field unit from certification. A sample of the infected plants will be collected by the Department for confirmation. One or more of the infected plants within a field unit will be flagged by the Department.

(4) The Department will inspect the field units at least two weeks prior to termination of irrigation.

Stat. Auth.: ORS 632.900 - 632.990, 570.305 & 561.990
Stats. Implemented: ORS 632.940
Hist.: DOA 12-2005, f. & cert. ef. 3-11-05

603-051-1053

Procedures for Certification

(1) In accordance with ORS 632.940, certification and the supervision of activities relating thereto, shall be in the Department. Inspection and testing procedures prescribed in this certification program may be carried out by the Department, and shall be conducted at such times and in such a manner as is acceptable by the Department.

(2) The methods and procedures used for field inspections shall conform to Department standards and shall be conducted in a manner and time as determined by the Department.

(3) All *Allium* seed meeting the requirements of this certification program shall have identification evidencing the same as Oregon Certified *Allium* seed.

(4) The Department will provide an official certificate.

(5) Any person selling or offering for sale, any *Allium* seed identified by official certificate as Oregon Certified *Allium* Seed shall be deemed to be responsible for the identity of such stock. All Oregon Certified *Allium* Seed offered for sale shall be handled in accordance with accepted commercial practices.

(6) Certification shall be refused if any white rot is found within the field unit. Such field units shall be considered infested and ineligible for participation in the program.

Stat. Auth.: ORS 632.900 - 632.990, 570.305 & 561.990
Stats. Implemented: ORS 632.940
Hist.: DOA 12-2005, f. & cert. ef. 3-11-05

603-051-1054

Application for Certification and Fees

(1) Application for certification shall be made on a form prescribed by the Department and shall be submitted to the Department by March 15 of each year so as to provide sufficient time for inspection of *Allium* field units. The application must include a copy of the official documentation for the certified seed that has been planted in the field unit(s). The Department may refuse applications received after this date.

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(2) The application shall contain the information required thereon, including the consent of the applicant for the Department to obtain samples for inspection and testing purposes.

(3) The ODA will operate this program on a cost-recovery basis. Fees charged by the Department are payable on or before December 31 of each year, and are for the sole purpose of defraying expenses incurred by the Department in the inspection, testing and certification procedures provided for in this certification program. Payment thereof shall not be construed as granting any right or privilege to the applicant.

Stat. Auth.: ORS 632.900 - 632.990, 570.305 & 561.990

Stats. Implemented: ORS 632.940

Hist.: DOA 12-2005, f. & cert. ef. 3-11-05

Department of Agriculture, Oregon Sweet Cherry Commission Chapter 669

Adm. Order No.: OSCC 1-2005

Filed with Sec. of State: 3-4-2005

Certified to be Effective: 3-4-05

Notice Publication Date: 2-1-05

Rules Amended: 669-010-0020

Subject: Removes procedure for revising assessment rates at the February meeting each year. Revises all assessment rates to the following: Fresh Market \$27.00 per ton, Canned \$6.75 per ton, Frozen \$6.75 per ton and Brine \$12.25 per ton.

Rules Coordinator: Dana Branson—(541) 386-5761

669-010-0020

Assessments

(1) The first purchaser or producer acting in the capacity of his or her own first purchaser will deduct and withhold for assessments the following amounts for all sweet cherries grown in Oregon and sold for the following purposes on any crop harvested after this date:

- (a) Fresh market — \$27 per ton;
- (b) Canned — \$6.75 per ton;
- (c) Frozen — \$ 6.75 per ton;
- (d) Brined — \$12.25 per ton.

(2) All casual sales of sweet cherries will be exempt from the assessment. (See definition of "Casual Sales".)

Stat. Auth.: ORS 576.066(1)(e), 576.304(2), 576.325(2)(a)(b) & (4)(c)

Stats. Implemented: ORS 576.325

Hist.: RSC 1(Temp), f. 6-11-74, ef. 6-15-74 thru 10-12-74; RSC 4, f. 11-15-74, ef. 12-11-74; RSC 7(Temp), f. & ef. 7-1-75; RSC 8, f. 8-13-75, ef. 9-11-75; RSC 9, f. & ef. 11-21-75; RSC 2-1980, f. 6-6-80, ef. 6-15-80; RSC 2-1987, f. & ef. 6-8-87; OSC 1-1989, f. 5-24-89, cert. ef. 6-1-89; OSC 1-1992, f. & cert. ef. 1-3-92; OSC 1-1994, f. & cert. ef. 6-15-94; OSC 2-1994, f. & cert. ef. 11-22-94; OSCC 1-1998, f. 7-2-98, cert. ef. 7-2-98; OSCC 1-2004, f. & cert. ef. 1-13-04; OSCC 1-2005, f. & cert. ef. 3-4-05

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

Adm. Order No.: BCD 1-2005

Filed with Sec. of State: 3-1-2005

Certified to be Effective: 3-1-05

Notice Publication Date: 1-1-05

Rules Amended: 918-525-0065, 918-525-0070, 918-525-0080, 918-525-0250, 918-525-0450, 918-525-0510

Rules Repealed: 918-525-0230

Subject: This rulemaking eliminates costly and time consuming out of state inspections performed by the division throughout the U.S. and Canada. In addition, it consolidates division paperwork containing manufacturer information for each manufacturing facility and reduces paperwork necessary to perform out of state in-plant inspections. All recreational vehicle inspections take place in Oregon on units manufactured for Oregon. This rulemaking allows the division the option of performing out-of-state in-plant inspections as necessary to ensure compliance with statute and rule.

Rules Coordinator: Heather L. Gravelle—(503) 373-7438

918-525-0065

Compliance Monitoring of Manufacturers

(1) To maintain consistent compliance with these rules the division:

(a) May inspect recreational vehicles at each facility selling, offering for sale or displaying for sale, the manufacturers products whether for wholesale, retail or consignment.

(b) May inspect recreational vehicles at all manufacturing facilities to evaluate the manufacturer's compliance with the rules adopted by the division.

(2) If the division determines that recreational vehicles produced by the manufacturer consistently fail to conform with the requirements of these rules, the manufacturer's quality assurance program or the pre-established acceptable quality level, the division may:

(a) Post a Notice of Violation on each recreational vehicle which fails to conform in accordance with OAR 918-525-0330;

(b) Remove the Insignia of Compliance from each recreational vehicle which fails to conform in accordance with OAR 918-525-0450(2);

(c) Increase inspections as necessary to assure adequate compliance in accordance with OAR 918-525-0080, 918-525-0310 and 918-525-0320;

(d) Rescind the manufacturer's certification in accordance with OAR 918-525-0080(4); or

(e) Require mandatory division training in accordance with OAR 918-525-0080(5).

(3) Fees for increased inspections or mandatory division training shall be set forth in OAR 918-525-0510 and 918-525-0520.

(4) Dealer lot monitoring inspections are paid through the insignia label fee set forth in OAR 918-525-0510.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 14-1996(Temp), f. & cert. ef. 7-1-96; BCD 24-1996, f. & cert. ef. 11-8-96; BCD 1-2005, f. & cert. ef. 3-1-05

918-525-0070

Manufacturer Registration

(1) All manufacturers of recreational vehicles shall register with the division if the manufacturer produces or intends to produce two or more recreational vehicles per year that will bear or are required to bear an Oregon insignia of compliance and be offered for sale in Oregon. Manufacturing facility registration shall be renewed by August 1 of each year by submitting an application for renewal to the division, together with the renewal fee specified in OAR 918-525-0510.

(2) Manufacturers not registered or whose registration has expired will not be issued Oregon insignia of approval or receive Oregon plan review and approval or division inspections.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 1-2005, f. & cert. ef. 3-1-05

918-525-0080

Manufacturing Facility Certification

(1) Each recreational vehicle manufacturer placed on a quality assurance system and authorized to use bulk insignia of compliance shall be certified by the division. Manufacturing facilities may be certified by the division if the following criteria are met:

(a) The manufacturer has registered with the division;

(b) The manufacturer has submitted and the division has approved the manufacturer's quality assurance manual;

(c) The manufacturer has division approved plans;

(d) The division has inspected a manufacturer's product and an inspection report has been issued verifying that the manufacturer's product meets the minimum safety standards adopted in OAR 918-525-0040; and

(e) Random units inspected by the division on dealer lots conform to the provisions of OAR 918-525-0065.

(2) The division may inspect a manufacturing facility and verify that facilities ability to follow the procedures outlined in its approved quality assurance manual.

(3) Certification inspections shall be performed at the division's convenience and at the inspection fee rates provided in OAR 918-525-0510.

(4) The division may rescind a manufacturing facility's certification if the division determines that any of the criteria identified in section (1) of this rule are not satisfied. The division shall notify a manufacturer in writing of its intent to decertify a manufacturing facility. The notice shall identify the circumstances and reasons for decertification. If the manufacturer fails to bring the facility into conformance with the requirements of these rules within the time specified by the division, the division may decertify the facility.

(5) As an alternative to decertifying the manufacturing facility, the division may require mandatory division training and increase the frequency of inplant inspections and dealer lot-monitoring. Violations identified on

ADMINISTRATIVE RULES

an inplant inspection report or a dealer lot monitoring report shall be corrected prior to the departure of the issuing inspector or a Notice of Violation shall be posted on the recreational vehicle. At the discretion of the issuing inspector, violations may be corrected after the departure of the issuing inspector if a summary of the corrective actions taken is submitted to the division within the time frame specified in OAR 918-525-0330.

(6) All certification inspection fees shall be as shown in OAR 918-525-0510(1) through (4).

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 1-2005, f. & cert. ef. 3-1-05

918-525-0250

Evidence of Division Approval

(1) One copy of division approved plans and specifications will be returned to the manufacturer. An approved copy shall be retained by the manufacturer and be made available for use during the division inspection.

(2) Approved plans and specifications shall be stamped, signed and dated by the division.

(3) Misuse or unauthorized reproduction of a division approval stamp is grounds for decertification of a manufacturer under OAR 918-525-0080(4).

Stat. Auth.: ORS 446

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 1-2005, f. & cert. ef. 3-1-05

918-525-0450

Insignia Removal

(1) When a registered and certified recreational vehicle manufacturer or repair operation discontinues operations, it shall notify the division, in writing within ten days of the facility closure and return all unused insignias.

(2) The division may remove an insignia from a recreational vehicle if the vehicle, equipment or installation violates any provision of OAR chapter 918, division 525 or ORS Chapter 446. The division shall notify the vehicle owner in writing of the violations. The division shall re-issue an insignia when the violations are corrected and the vehicle passes an inspection under OAR 918-525-0330.

(3) An insignia of compliance shall be removed and returned to the division by the local authority having jurisdiction when a recreational vehicle is converted to another occupancy or use. This does not waive the owner's responsibility to conform to other state or local requirements for the new occupancy or use.

(4) An insignia of compliance shall be removed and returned to the division when a recreational vehicle is attached to a permanent foundation. This does not waive the owner's responsibility to bring the recreational vehicle into conformance with the applicable Oregon Specialty Codes.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 1-2005, f. & cert. ef. 3-1-05

918-525-0510

Fees

All fees in this rule apply to the division only and do not apply to municipalities. The following fees shall be paid to and collected by the division. Fees which are billed by the division shall be paid within 30 days. Fees not received by the division within 90 days of the billing date shall be considered delinquent and all division services to the person or company will be suspended until all delinquent fees are received by the division:

(1) Inspection Fee:

(a) \$45 for an inspection requiring one hour or less;

(b) \$22.50 for every 30 minutes or fraction exceeding one hour, including travel time and mileage; and

(c) Mileage shall be paid at the rate established by the Oregon Department of Administrative Services.

(2) Field Technical Service Fee:

(a) \$45 for service requiring one hour or less;

(b) \$22.50 for every 30 minutes or fraction exceeding one hour, including travel time and mileage; and

(c) Mileage shall be paid at the rate established by the Oregon Department of Administrative Services.

(3) Out-of-State Inspection or Field Technical Service Fee: In addition to the hourly charges of subsections (a) and (b) of this section, the division shall be reimbursed for actual cost based on published air fare and/or equivalent, plus necessary surface transportation and cost for food and lodging

consistent with the allowances established by the Oregon Department of Administrative Services for authorized state employee travel.

(4) Reinspection Fee: Same fee schedule as noted in sections (1), (2), and (3) of this rule.

(5) Quality Assurance Manual Fee: \$30 for initial review of manuals and \$20 for review of manual supplements. This fee includes the initial issuance of five insignia to certified repair operations.

(6) Plan Renewal Fee: \$15 for administrative costs of renewing plans.

(7) Plan Supplement Fee: Same fee schedule as noted in sections (13) through (18) of this rule.

(8) Change of Name, ownership or Address Fee: \$20 for each change.

(9) Insignia Label Fee: \$25 per insignia for manufacturers and \$5 for a lot of five insignias for repair operations.

(10) Replacement Insignia Fee: \$25 per insignia for manufacturers and \$5 for a lot of five insignias for repair operations.

(11) Registration Fee: \$25 per manufacturer or operation.

(12) Annual Registration Renewal Fee: \$20 per manufacturer or operation.

(13) Plan Filing Fee: \$10 for each submittal.

(14) Plan Approval Model Fee: \$15.

(15) Plumbing Supplement Fees:

(a) Drain, waste and Vent: \$20 for each plan submitted;

(b) Potable Water: \$10 for each plan submitted.

(16) Electrical Supplement Fees:

(a) 12 Volt: \$20 for each plan submitted;

(b) 120 to 240 Volt: \$20 for each plan submitted;

(c) Generator: \$10 for each plan submitted.

(17) Mechanical Supplement Fee: \$10 for each plan submitted.

(18) Model Floor Plan Supplement Fee: \$15 for each plan submitted and \$5 for each model number supplement.

(19) Design Option, Plan Approval Model, or Number Change Fee: \$20.

(20) Recreational Vehicle Visual Inspection Fee: \$30. This fee includes the insignia label, one initial inspection and one reinspection.

(21) Recreational Vehicle Alteration Permit Fee: \$30. This fee includes one initial inspection and one reinspection.

(22) Permit Reinspection Fee: \$25.

(23) Park Trailer Installation Fee: \$105 per installation. This fee includes inspection of the stand and lot preparation; all support blocking; flood and wind anchoring devices; perimeter skirting; under-floor access and ventilation; temporary steps; and plumbing; mechanical and electrical connections, when all work is ready for inspection at one time.

(24) Park Trailer Installation Reinspection Fee: \$85 per reinspection.

(25) Municipalities shall establish their own fee schedule or may adopt the division's fee schedule through local ordinance for the installation of park trailers.

(26) Fees for the construction or installation of accessory buildings and accessory structures shall be those required by the authority having jurisdiction.

(27) A municipality's permit and plan review fees shall be reasonable and shall not exceed the cost of administering the program per ORS 455.210.

Stat. Auth.: ORS 446.160 & 446.176

Stats. Implemented: ORS 446.160 & 446.176

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 14-1996(Temp), f. & cert. ef. 7-1-96; BCD 24-1996, f. & cert. ef. 11-8-96; BCD 12-1998(Temp), f. 6-2-98, cert. ef. 7-1-98 thru 12-27-98; BCD 23-1998, f. 11-9-98, cert. ef. 11-15-98; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 1-2005, f. & cert. ef. 3-1-05

Department of Consumer and Business Services, Division of Finance and Corporate Securities Chapter 441

Adm. Order No.: FCS 1-2005(Temp)

Filed with Sec. of State: 3-4-2005

Certified to be Effective: 3-4-05 thru 8-30-05

Notice Publication Date:

Rules Amended: 441-710-0010

Subject: This temporary rule adds a provision allowing the director, by order, to reduce fees assessed to state-chartered credit unions in any specific year.

Rules Coordinator: Berri Leslie—(503) 947-7478

ADMINISTRATIVE RULES

441-710-0010

Fees and Charges Credit Unions Pay the Director

(1) Effective February 15, 2001, the annual regulatory fee under ORS 723.114(1), which is due and payable on March 1 of each calendar year, by each credit union, with assets of:

- (a) Less than \$10 million, is \$375 plus .0001920 of all assets;
- (b) \$10 million or more but less than \$20 million, is \$1,234 plus .000173 of all assets;
- (c) \$20 million or more but less than \$50 million, is \$1300 plus .000165 of all assets;
- (d) \$50 million or more but less than \$100 million, is \$1500 plus .0001120 of all assets;
- (e) \$100 million or more but less than \$200 million, is \$7100 plus .000099 of all assets;
- (f) \$200 million or more is \$7,906 plus .000095 of all assets; or
- (g) If the credit union is a corporate credit union, effective January 3, 2000, the fee schedule is \$16,800 plus .0000345 of all assets.

(2) The rate of charge payable by a credit union is \$60 an hour for each examiner used in an examination for extra services provided a credit union under ORS 723.114(2).

(3) Notwithstanding the rate of charge fixed by section (2) of this rule:

(a) If an examiner from the division or the Supervisor is required to travel out of state for an examination or to provide extra service, the rate of charge payable by the credit union is \$60 an hour per person, plus actual expenses for travel and subsistence;

(b) If the examination or the extra service is performed by a consultant hired by contract for the particular work, the charge payable by the credit union is the actual cost to the division of the contract consultant.

(4) In addition to the charges fixed by sections (2) and (3) of this rule, the Director will collect from a credit union any additional costs directly attributable to extra services given the credit union under ORS 723.114(2).

(5) As used in this rule:

(a) "Assets" means the average value of total assets reported by the credit union for the four calendar quarters ending with the quarter immediately preceding the due date of the fee. However, if a credit union was not in existence or doing business in this state during all of the prior calendar year "assets" means the average assets reported on the quarterly reports for the quarters for which reports were required to be filed during the calendar year immediately preceding the due date of the fee;

(b) "Extra service" means any attention other than a regular or special examination.

(6) The annual regulatory fee of a credit union that is party to a merger or conversion, or is liquidated or dissolved:

(a) Is not subject to refund in whole or in part if the merger, conversion, liquidation or dissolution occurs prior to the end of the calendar years for which a fee has been paid;

(b) Is not subject to pro ration if the credit union operated during any part of the calendar year during which the merger, conversion, liquidation or dissolution occurred.

(7) **The Director may by order reduce the fees assessed for any specific year.**

Stat. Auth.: ORS 705.620, 723.102 & 723.532
Stat. Implemented: ORS 723.114 & 723.532
Hist.: FID 9-1985, f. & ef. 12-31-85; FCS 2-1988, f. 1-29-88, cert. ef. 2-1-88; Renumbered from 805-072-0010; FCS 1-1989, f. 1-18-89, cert. ef. 2-1-89; FCS 1-1991, f. 1-28-91, cert. ef. 2-15-91; FCS 3-1994, f. 2-1-94, cert. ef. 2-15-94; Administrative correction 9-29-97; FCS 3-2000, f. & cert. ef. 3-9-00; FCS 3-2001, f. & cert. ef. 2-13-01; FCS 1-2005(Temp), f. & cert. ef. 3-4-05 thru 8-30-05

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

Adm. Order No.: ID 1-2005

Filed with Sec. of State: 3-1-2005

Certified to be Effective: 3-21-05

Notice Publication Date: 11-1-04

Rules Adopted: 836-014-0400

Subject: This rulemaking permanently adopts a temporary rule that established a market assistance plan for commercial general liability insurance, a class of commercial liability insurance.

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

836-014-0400

Market Assistance Plan

(1) Insurers that are authorized to write commercial general liability insurance relating to construction contractors and are writing that coverage shall form a market assistance plan to assist businesses and service providers unable to purchase the coverage in adequate amounts from either the admitted or nonadmitted market. For the purpose of this rule, commercial general liability insurance is a class of commercial liability insurance.

(2) Except as provided in section (3) of this rule, the market assistance plan established under this rule shall operate under the plan of operation prepared pursuant to ORS 735.210(2) and approved by the Director on July 26, 2004.

(3) At the request of the Director, for the purpose of implementing the purpose of the market assistance plan under section (1) of this rule, the insurers that formed the market assistance plan may modify the plan and the plan of operation described in section (2) of this rule, subject to approval of the modification by the Director.

Stat. Auth.: ORS 731.244 & 735.210
Stats. Implemented: ORS 735.210
Hist.: ID 8-2004(Temp), f. & cert. ef. 10-12-04 thru 3-20-05; ID 1-2005, f. 3-1-05, cert. ef. 3-21-05

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Adm. Order No.: ID 2-2005

Filed with Sec. of State: 3-1-2005

Certified to be Effective: 3-1-05

Notice Publication Date: 1-1-05

Rules Amended: 836-052-0700

Subject: This rulemaking amends the rule that adopts the Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application in order to incorporate recent changes recommended by the Advisory Committee on Physician Credentialing Information in the Office for Oregon Health Plan Policy and Research. The applications allow collection of uniform information needed by health care service contractors to credential and recredential physicians seeking designation as participating providers for health plans. The Director of DCBS and the Director of Human Services are required to adopt identical rules in a timely manner to carry out the recommendations.

The Oregon Practitioner Credentialing Application with the changes incorporated may be accessed at www.ohpr.state.or.us/advisory/CredentialMenu.htm. The Oregon Practitioner Recredentialing Application with the changes incorporated may be accessed at www.ohpr.state.or.us/advisory/RecredentialMenu.htm.

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

836-052-0700

Physician Credentialing, Health Care Service Contractors

(1) The Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application, both of which were approved by the Advisory Committee on Physician Credentialing Information (ACPCI) on September 28, 2004, and both of which carry that date, are adopted with respect to health care service contractors as Exhibits 1 and 2 to this rule.

(2) Each health care service contractor shall use the application forms adopted in section (1) of this rule

(3) This rule is adopted pursuant to the authority of ORS 442.807 for the purpose of enabling the collection of uniform information necessary for health care service contractors to credential physicians seeking designation as a participating provider for a health plan, thereby implementing ORS 442.800 to 442.807 with respect to health care service contractors.

Stat. Auth.: ORS 442.807
Stats. Implemented: ORS 442.800 - 442.807
Hist.: ID 12-2001, f. & cert. ef. 10-15-01; ID 1-2004, f. & cert. ef. 2-3-04; ID 2-2005, f. & cert. ef. 3-1-05

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Adm. Order No.: ID 3-2005

Filed with Sec. of State: 3-1-2005

Certified to be Effective: 3-1-05

Notice Publication Date: 11-1-04

Rules Adopted: 836-052-0516, 836-052-0526, 836-052-0536, 836-052-0546, 836-052-0556, 836-052-0566, 836-052-0616, 836-052-0636, 836-052-0676, 836-052-0726, 836-052-0746, 836-052-0756, 836-052-0766

ADMINISTRATIVE RULES

Rules Amended: 836-052-0500

Rules Repealed: 836-052-0510, 836-052-0515, 836-052-0520, 836-052-0525, 836-052-0540, 836-052-0565, 836-052-0570, 836-052-0607

Rules Ren. & Amended: 836-052-0645 to 836-052-0576, 836-052-0535 to 836-052-0586, 836-052-0583 to 836-052-0596, 836-052-0580 to 836-052-0606, 836-052-0615 to 836-052-0626, 836-052-0588 to 836-052-0646, 836-052-0545 to 836-052-0656, 836-052-0530 to 836-052-0666, 836-052-0550 to 836-052-0686, 836-052-0620 to 836-052-0696, 836-052-0640 to 836-052-0706, 836-052-0605 to 836-052-0716, 836-052-0575 to 836-052-0736, 836-052-0600 to 836-052-0776, 836-052-0610 to 836-052-0786

Subject: This rulemaking revises Oregon's rules governing long term care insurance, incorporating changes in the model regulations of the National Association of Insurance Commissioners in order to make the rules more relevant to and consistent with the current national insurance market. Topics include but are not limited to policy definitions; protections against unintentional policy lapse; required policy provisions; requirements for disclosure; reporting and filing; trade practices; minimum standards; inflation protection; reserve standards; premium rate increase procedures; suitability standards; nonforfeiture benefits; and other matters.

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

836-052-0500

Statutory Authority; Applicability

(1) OAR 836-052-0500 to 836-052-0786 are adopted pursuant to the requirements and authority of ORS 731.244, 742.003, 742.005, 742.023, 743.013, 743.655, 743.656 and 746.240.

(2) OAR 836-052-0500 to 836-052-0786 do not apply to a provision in a life insurance policy, rider or endorsement that provides accelerated death benefits in a single lump-sum upon the occurrence of a single qualifying event as defined in ORS 743.154.

(3) OAR 836-052-0500 to 836-052-0786 apply to policies having indemnity benefits that are triggered by activities of daily living and sold as disability income insurance if:

(a) The benefits of the disability income policy are dependent upon or vary in amount based on the receipt of long-term care services;

(b) The disability income policy is advertised, marketed or offered as insurance for long-term care services; or

(c) Benefits under the policy may commence after the policyholder has reached normal retirement age for Social Security unless benefits are designed to replace lost income or pay for specific expenses other than long-term care services.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.685 & 746.240

Stats. Implemented: ORS 742.003, 742.005, 743.650, 743.655 & 743.656.

Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; ID 1-1996, f. & cert. ef. 1-12-96; ID 3-2005, f. & cert. ef. 3-1-05

836-052-0516

Policy Definitions

A long-term care insurance policy delivered or issued for delivery in this state shall not use the terms set forth in this rule unless the terms are defined in the policy according to the definitions in this rule and satisfy the requirements in OAR 836-052-0596:

(1) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting and transferring.

(2) "Acute condition" means that the individual is medically unstable and requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain the individual's health status.

(3) "Adult day care" means a program for six or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

(4) "Adult foster care" means any family home or facility in which residential care is provided in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage.

(5) "Assisted living" services means services to persons with unique needs, such as, but not limited to, dementia or traumatic brain injury.

(6) "Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

(7) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

(8) "Continence" means the ability to maintain control of bowel and bladder function or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).

(9) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.

(10) "Eating" means feeding oneself by getting food into the body from a receptacle (such as a plate, cup or table) or by a feeding tube or intravenously.

(11) "Hands-on assistance" means physical assistance (minimal, moderate or maximal) without which the individual would not be able to perform the activity of daily living.

(12) "Home care" services means medical and nonmedical services provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.

(13) "Medicare" means "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.

(14) "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

(15) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

(16) "Residential care" means the provision of room and board and services that assist the resident in activities of daily living, such as assistance with bathing, dressing, grooming, eating, medication management, money management or recreation.

(17) "Skilled nursing care," "intermediate care," "personal care," "home care" and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

(18) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(19) "Transferring" means moving into or out of a bed, chair or wheelchair.

(20) All providers of services, including but not limited to "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility" and "home care agency," shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240

Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655 & 743.656, 746.240

Hist.: ID 3-2005, f. & cert. ef. 3-1-05

836-052-0526

Policy Practices and Provisions

(1) Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the requirements of OAR 836-052-0546. In addition:

(a) A policy issued to an individual shall not contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(b) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(c) The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(d) The term "level premium" may be used only when the insurer does not have the right to change the premium.

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(e) In addition to the other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable, within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended.

(2) Limitations and Exclusions. A policy may not be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

(a) Preexisting conditions or diseases as allowed in OAR 836-052-0546(4);

(b) Alcoholism and drug addiction;

(c) Illness, treatment or medical condition arising out of:

(A) War or act of war (whether declared or undeclared);

(B) Participation in a felony, riot or insurrection;

(C) Service in the armed forces or units auxiliary thereto;

(D) Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; or

(E) Aviation (this exclusion applies only to non-fare-paying passengers).

(d) Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;

(e) Expenses for services or items available or paid under another long-term care insurance or health insurance policy;

(f) In the case of a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount.

(3) Section (2) of this rule does not prohibit exclusions and limitations by type of provider or territorial limitations.

(4) Extension of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period and all other applicable provisions of the policy.

(5) Continuation or conversion of coverage is governed as follows:

(a) Group long-term care insurance issued in this state on or after September 1, 2005 shall provide covered individuals with a basis for continuation or conversion of coverage.

(b) For the purposes of this section, "a basis for continuation of coverage" means a policy provision that maintains coverage under the existing group policy when the coverage would otherwise terminate and that is subject only to the continued timely payment of premium when due. Group policies that restrict provision of benefits and services to, or contain incentives to use certain providers or facilities may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The Director shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(c) For the purposes of this section, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy that it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.

(d) For the purposes of this section, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the Director to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. When the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the Director, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences

between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(e) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 31 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(f) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. When the group policy from which conversion is made replaces previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(g) Continuation of coverage or issuance of a converted policy shall be mandatory, except when:

(A) Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(B) The terminating coverage is replaced not later than 31 days after termination by group coverage effective on the day following the termination of coverage:

(i) That provides benefits identical to or benefits determined by the Director to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(ii) The premium for which is calculated in a manner consistent with the requirements of subsection (f) of this section.

(h) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy that provides benefits on the basis of incurred expenses may contain a provision that results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. The provision shall be included in the converted policy only if the converted policy also provides for a premium decrease or refund that reflects the reduction in benefits payable.

(i) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(j) Notwithstanding any other provision of this section, an insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(k) For the purposes of this section a "managed-care plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

(6) Discontinuance and Replacement. If a group long-term care insurance policy is replaced by another group long-term care insurance policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(a) Shall not result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(b) Shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

(7)(a) The premium charged to an insured shall not increase due to either:

(A) The increasing age of the insured at ages beyond 65; or

(B) The duration the insured has been covered under the policy.

(b) The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under OAR 836-052-0746, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

(c) A reduction in benefits shall not be considered a premium change, but for purpose of the calculation required under OAR 836-052-0746, the initial annual premium shall be based on the reduced benefits.

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(8) Electronic enrollment for group policies is governed by the following provisions:

(a) In the case of a group defined in ORS 743.652(6)(a), any requirement that a signature of an insured be obtained by an insurance producer or insurer shall be deemed satisfied if:

(A) The consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;

(B) The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and

(C) The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information and "privileged information" as defined by ORS 746.600, is maintained.

(b) The insurer shall make available, upon request of the Director, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

(9) Request for termination of coverage. When the policyholder, insured or beneficiary requests termination of coverage, any unearned premiums for that insured shall be promptly refunded to the payee or beneficiary.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244,742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655 & 743.656, 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05

836-052-0536

Unintentional Lapse

Each insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1)(a) Notice before lapse or termination. An individual long-term care insurance policy or certificate shall not be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate one or more additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice." The insurer shall notify the insured of the right to change this written designation no less often than once every two years.

(b) When the policyholder or certificate holder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in subsection (a) of this section need not be met until 60 days after the policyholder or certificate holder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

(c) Lapse or termination for nonpayment of premium. An individual long-term care insurance policy or certificate shall not lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to subsection (a) of this section, at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid. Notice may not be given until 30 days after a premium is due and unpaid. Notice shall be deemed to have been given as of five days after the date of mailing.

(2) Reinstatement. In addition to the requirement in section (1)(a) of this rule, a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage in the event of lapse if the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five months after termination and shall allow for

the collection of past due premium, when appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244,742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655 & 743.656, 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05

836-052-0546

Required Policy Provisions

(1) Renewability. Each individual long-term care insurance policy shall contain a renewability provision. The following requirements apply to such a provision:

(a) The provision shall be appropriately captioned, shall appear on the first page of the policy and shall clearly state that the coverage is guaranteed renewable or noncancellable. This provision does not apply to a policy that does not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

(b) A long-term care insurance policy or certificate, other than one in which the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

(2) Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in a writing that is signed by the insured, unless 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, rider or endorsement.

(3) Payment of Benefits. A long-term care insurance policy that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage.

(4) Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations of preexisting condition shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(5) Other limitations or conditions on eligibility for benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."

(6) Disclosure of Tax Consequences. With regard to life insurance policies that provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider, outline of coverage and any other related documents. This section does not apply to qualified long-term care insurance contracts.

(7) Benefit Triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long term care, shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in the same paragraph. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this requirement too shall be specified.

(8) A qualified long-term care insurance contract shall include a statement in the policy and in the outline of coverage as contained in OAR 836-052-0776 that the policy is intended to be a qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

(9) A nonqualified long-term care insurance contract shall include a statement in the policy and in the outline of coverage as contained in OAR

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836-052-0776 that the policy is not intended to be a qualified long-term care insurance contract.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655 & 743.656, 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05

836-052-0556

Required Disclosure of Rating Practices to Consumers

(1) This rule applies as follows:

(a) Except as provided in subsection (b) of this section, this rule applies to any long term care policy or certificate issued in this state on or after March 1, 2006.

(b) For certificates issued on or after March 1, 2005 under a group long-term care insurance policy as defined in ORS 743.652(6)(a), which policy was in force on March 1, 2005, the provisions of this rule shall apply on the policy anniversary following March 1, 2006.

(2) Other than policies for which no applicable premium rate or rate schedule increases can be made, an insurer shall provide all of the information listed in this section to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, the insurer shall provide all of the information listed in this rule to the applicant not later than at the time of delivery of the policy or certificate. The information is as follows:

(a) A statement that the policy may be subject to rate increases in the future;

(b) An explanation of potential future premium rate revisions and the policyholder's or certificate holder's option in the event of a premium rate revision.

(c) The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase.

(d) A general explanation for applying premium rate or rate schedule adjustments, which shall include:

(A) A description of when premium rate or rate schedule adjustments will be effective (e.g. next anniversary date, next billing date, etc.); and

(B) The right to a revised premium rate or rate schedule as provided in subsection (b) of this section if the premium rate or rate schedule is changed.

(e)(A) Information regarding each premium rate increase on this policy form over the past ten years for this state or any other state that at a minimum identifies

(i) The policy forms for which premium rates have been increased.

(ii) The calendar years when the form was available for purchase; and

(iii) The amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

(B) The insurer may provide additional explanatory information related to the rate increases.

(C) An insurer shall have the right to exclude from the disclosure premium rate increases that apply only to blocks of business acquired from other nonaffiliated insurers or the long term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition.

(D) If an acquiring insurer files for a rate increase on a long term care insurance policy form acquired from a nonaffiliated insurer or a block of policy forms acquired from a nonaffiliated insurer on or before the later of the effective date of this rule or the end of a 24-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. The nonaffiliated selling insurer shall include the disclosure of that rate increase in accordance with paragraph (A) of this subsection.

(E) If the acquiring insurer in paragraph (D) of this subsection files for a subsequent rate increase whether within the 24-month period or later, the acquiring insurer must make all disclosures required by section (5) of this rule, on the same policy form acquired from nonaffiliated insurer or block of policy forms acquired from nonaffiliated insurers referenced in paragraph (D) of this subsection, including disclosure of the earlier rate increase referenced in paragraph (D) of this subsection.

(3) An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under subsection (2)(a) and (e) of this section. If owing to the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign an acknowledgement no later than at the time of delivery of the policy or certificate.

(4) An insurer shall use the forms in **Exhibits 1 and 2** to comply with sections (1) and (2) of this rule.

(5) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificate holders, if applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by section (2) of this rule when the rate increase is implemented.

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

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655 & 743.656, 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05

836-052-0566

Initial Rate Filing Requirements

(1) This rule applies to any long-term care insurance policy issued in this state on or after March 1, 2006.

(2) An insurer shall provide the following information to the Director for prior approval before making a long-term care insurance form available for sale:

(a) A copy of the disclosure documents required in OAR 836-052-0556; and

(b) An actuarial certification consisting of at least the following:

(A) A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

(B) A statement that the policy design and coverage provided have been reviewed and taken into consideration;

(C) A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

(D) A complete description of the basis for contract reserves that are anticipated to be held under the form, to include:

(i) Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

(ii) A statement that the assumptions used for reserves contain reasonable margins for adverse experience;

(iii) A statement that the net valuation premium for renewal years does not increase except for attained-age rating when permitted; and

(iv) A statement that the differences between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations in which this does not occur, as follows:

(I) An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship;

(II) If the gross premiums for certain age groups appear to be inconsistent with this requirement, the Director may request a demonstration under section (3) of this rule, based on a standard age distribution; and

(E)(i) A statement that the premium rate schedule is not less than the premium rate schedule for existing policy forms also available from the insurer except for reasonable differences attributable to benefits; or

(ii) A comparison of the premium schedules for policy forms that are currently available from the insurer with an explanation of the differences.

(3) An insurer shall provide an actuarial demonstration showing that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claims experience on similar policy forms adjusted for any premium and benefit differences, or relevant and credible data from other studies, or both.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240

Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655 & 743.656, 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05

836-052-0576

Prohibition Against Post-Claims Underwriting, Applications

(1) Each application for a long-term care insurance policy, rider or certificate, except those that are guaranteed issue, shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2) If an application for long-term care insurance contains a question asking whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed;

(3) If the medications listed in the application were known by the insurer, or should have been known by the insurer at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, the policy, rider or certificate shall not be rescinded for that condition.

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(4) When an application for a long-term care insurance policy, rider or certificate asks any health questions, the following shall apply:

(a) Each completed application shall be submitted to the insurer for underwriting review. Field issuance by an insurance producer is not allowed.

(b) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy, rider or certificate: Caution: If your answers on this application are incorrect or untrue, (insurer) has the right to deny benefits or rescind your policy.

(c) The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy, rider or certificate at the time of delivery: Caution: The issuance of this long-term care insurance (policy) (rider) (certificate) is based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address).

(5) Prior to issuance of a long-term care policy, rider or certificate to an applicant age 80 or older, the insurer shall obtain one or more of the following:

- (a) A report of physical examination;
- (b) An assessment of functional capacity;
- (c) An attending physician's statement;
- (d) Copies of medical records.

(6) A copy of the completed application or enrollment form, whichever is applicable, shall be delivered to the insured not later than the time of delivery of the policy, rider or certificate unless it was retained by the applicant at the time of application.

(7) Every insurer or other entity selling long-term care insurance benefits shall maintain a record of all rescissions of policies, riders and certificates, both state- and country-wide, except those that the insured voluntarily effectuated, and shall annually furnish this information to the Director in the format prescribed in **Exhibit 1** or similar form approved by the Director.

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

Stat. Auth.: ORS 731, 742 & 743

Stats. Implemented: ORS 743.655(10)(a)

Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0645, ID 3-2005, f. & cert. ef. 3-1-05

836-052-0586

Minimum Standards for Home Health and Community Care Benefits in Long-Term Care Insurance Policies

(1) A long-term care insurance policy, certificate or rider that provides benefits for home care services or community care services may not limit or exclude those benefits:

(a) By requiring that the insured or claimant would need care in a skilled nursing facility if home care services were not provided;

(b) By requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services, or either service or simultaneously receive both services, in a home, community, or institutional setting before home care services are covered;

(c) By limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) By requiring that a nurse or therapist provide services covered by the policy when the services can be provided by a home care aide or other licensed or certified home care worker acting within the scope of the licensure or certification;

(e) By requiring that the insured or claimant have an acute condition before home care services are covered;

(f) By excluding coverage for personal care services provided by a home care aide;

(g) By requiring that the provision of home care services be at a level of certification or licensure greater than that required by the eligible service;

(h) By limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) By excluding coverage for adult day care services.

(2) A provision in a long-term care insurance policy, certificate or rider for home care or community care services shall provide total home care or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy, certificate or rider, at the time covered home care or community care services are being received. This requirement does not apply to

policies, certificates or riders issued to residents of continuing care retirement communities.

(3) Home care coverage may be applied to the nonhome care benefits provided in the policy, certificate or rider when determining maximum coverage under the terms of the policy, certificate or rider.

Stat. Auth.: ORS 731, 742 & 743

Stats. Implemented: ORS 743.655(1)(a) & 743.656

Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0535, ID 3-2005, f. & cert. ef. 3-1-05

836-052-0596

Standards for Covered Services

This rule establishes standards for covered services for the purpose of payment of benefits pursuant to ORS 743.656. An insurer shall not define the covered services more restrictively than the following minimum standards, or similar standards found by the Director to be substantially as favorable to the consumer:

(1) Nursing home services, when provided to the insured in this state, include services provided in or by a nursing home licensed under ORS 678.710 to 678.840. When provided to the insured outside this state, nursing home services include services provided in or by a nursing home in the other state. The nursing home must be licensed by the other state if so required by a similar licensing or other regulatory program;

(2) Assisted living services, when provided to the insured in this state, include those services provided in a facility or by a person licensed or otherwise regulated by this state to provide assisted living services as that term is defined in OAR 411-056-0005. When the services are provided to the insured outside this state, the provider or providing facility must be licensed by the other state if so required by a similar licensing or other regulatory program;

(3) Home care services, regardless of the state in which they are provided, include service provided in the insured's own home rather than a facility such as an assisted living facility or adult foster care facility;

(4) Adult foster care services, when provided to the insured in this state, include those services that are provided in an adult foster home pursuant to a license issued under ORS 443.705 to 443.825. When the services are provided to the insured outside this state, the provider or providing facility must be licensed by the other state if so required by a similar licensing or other regulatory program; and

(5) Services through a residential care facility, when provided to the insured in this state, include those services provided in a facility or by a person licensed or otherwise regulated by this state to provide services through a residential care facility as that term is defined in ORS 443.400. When the services are provided to the insured outside this state, the provider or providing facility must be licensed by the other state if so required by a similar licensing or other regulatory program.

Stat. Auth.: ORS 731.244 & 743.656

Stats. Implemented: ORS 743.656

Hist.: ID 9-1991, f. 12-24-91, cert. ef. 1-1-92; Renumbered from 836-052-0583, ID 3-2005, f. & cert. ef. 3-1-05

836-052-0606

Use and Definition of "Home" or Similar Wording

A long-term care insurance policy that defines "home" or uses similar wording to refer to the residence of the insured shall define or use wording that means or refers to the principal place of residence for the insured, whether a private home, a foster home, congregate care or assisted living facility or other place in a community setting, other than a licensed nursing facility.

Stat. Auth.: ORS 731, 742 & 743

Stats. Implemented: ORS 743.655(1)(a) & 743.656

Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0580, ID 3-2005, f. & cert. ef. 3-1-05

836-052-0616

Requirement to Offer Inflation Protection

(1) An insurer may not offer a long-term care insurance policy unless the insurer also offers to the policyholder, in addition to any other inflation protection offered by the insurer, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations that are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. An insurer must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than a feature that does one of the following:

(a) Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than five percent;

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(b) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five percent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(c) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) When the policy is issued to a group, the required offer in section (1) of this rule shall be made to the group policyholder, except that if the policy is issued to a group defined in ORS 743.652(6)(d) other than to a continuing care retirement community, the offering shall be made to each proposed certificate holder.

(3) The offer in section (1) of this section shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

(4)(a) An insurer shall include the following information in or with the outline of coverage:

(A) A graphic comparison of the benefit levels of a policy that increases benefits by five percent compounded over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20-year period.

(B) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(b) An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(5) Inflation protection benefit increases under a policy that contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(6) An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium that the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(7)(a) Inflation protection as provided in section (1)(a) of this rule shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this section. The rejection may be either in the application or on a separate form.

(b) The rejection shall be considered a part of the application and shall state:

I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans _____, and I reject inflation protection.
Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655 & 743.656, 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05

836-052-0626

Requirements for Application Forms and Replacement Coverage

(1) An application form for long-term care insurance shall include the questions set forth in this section designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy, rider or certificate in force or whether a long-term care insurance policy, rider or certificate is intended to replace any other health insurance policy, rider or certificate currently in force. A supplementary application or other form to be signed by the applicant and insurance producer, except when the coverage is sold without an insurance producer, containing such questions may be used. With regard to a replacement policy issued to a group defined by ORS 743.652(6)(a), the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced, but only if the certificate holder has been notified of the replacement. The questions are as follows:

(a) Do you have another long-term care insurance policy, rider or certificate in force (including health care service contract, health maintenance organization contract)?

(b) Did you have another long-term care insurance policy, rider or certificate in force during the last 12 months?

(A) If so, with which insurer?

(B) If that policy lapsed, when did it lapse?

(C) Are you covered by a state assistance program (Medicaid)?

(d) Do you intend to replace any of your medical or health insurance coverage with this policy, rider or certificate?

(2) An insurance producer shall list any other health insurance policies that the insurance producer has sold to the applicant:

(a) List such policies sold that are still in force, and;

(b) List such policies sold in the past five years that are no longer in force.

(3) Solicitations other than direct response. Upon determining that a sale will involve replacement of long-term care insurance coverage, the insurer, other than an insurer using direct response solicitation methods, or its producer, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the form shown in Exhibit 1 to this rule.

(4) Direct Response Solicitations. An insurer using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the form shown in Exhibit 2 to this rule.

(5) When replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. Notice shall be sent within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(6) Life insurance policies that accelerate benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of OAR 836-080-0001 to 0043. If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

(7) Sections (1) through (6) do not apply when the application is to the existing insurer that issued the existing policy, certificate or rider when the transaction meets the following:

(a) A contractual change or a conversion privilege is being exercised, or

(b) When the existing policy, certificate or rider is being replaced by the same insurer and unearned premium is credited toward the new coverage.

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

Stat. Auth.: ORS 731, 742 & 743

Stats. Implemented: ORS 743.010(1), 743.013(3) & 743.655(1)(a)

Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0615, ID 3-2005, f. & cert. ef. 3-1-05

836-052-0636

Reporting Requirements

(1) Every insurer shall maintain records for each insurance producer of that insurance producer's amount of replacement sales as a percent of the insurance producer's total annual sales and the amount of lapses of long-term care insurance policies sold by the insurance producer as a percent of the insurance producer's total annual sales.

(2) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

(3) Every insurer shall report annually by June 30 the ten percent of its agents with the greatest percentages of lapses and replacements as measured by Subsection (1) above using Exhibit 1 to this rule or a similar form including the following information:

(a) The number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(b) The number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

(4) Every insurer shall report annually by June 30, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied using Exhibit 2 to this rule or a similar form.

(5) As used in this rule:

(a) "Claim" means a request for payment of benefits under an in force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;

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(b) "Denied" means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition; and

(c) "Report" means on a statewide basis.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240

Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655 & 743.656, 746.240

Hist.: ID 3-2005, f. & cert. ef. 3-1-05

836-052-0646

Benefits Provided Through Advancement of Life Insurance Proceeds

(1) When long term care benefits are provided through early payment of a portion of a life insurance policy death benefit, the insurer may make no more than a pro rata reduction in the life insurance policy cash value, based on the percentage of death benefits advanced. When the cash value is reduced in this manner, the insurer may apply no more of the payment to the reduction of any outstanding policy loans than this same pro rata percentage.

(2) For each month in which a long term care benefit has been provided through early payment of a portion of a life insurance death benefit, the insurer shall provide a report to the policyholder showing the benefits paid during the month, the change in the life insurance policy cash value, loan balance and death benefit, and the amount of benefits remaining.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240

Stats. Implemented: ORS 742.003, 742.005, 743.650, 743.655 & 743.656

Hist.: ID 1-1996, f. & cert. ef. 1-12-96; Renumbered from 836-052-0588, ID 3-2005, f. & cert. ef. 3-1-05

836-052-0656

Reserve Standards

(1) Each insurer shall use the following standards for determining policy reserves for long-term care insurance: When long-term care benefits are provided through the acceleration of benefits under a group or individual life insurance policy or a rider to such a policy, policy reserves for the benefits shall be determined in accordance with ORS 733.322. Claim reserves shall also be established in the case when the policy or rider is in claim status.

(b) Reserves for policies and riders subject to this section shall be based on the multiple decrement model using all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.

(c) In the development and calculation of reserves for long-term care insurance policies and riders subject to this section, an insurer shall consider the applicable policy and rider provisions, marketing methods, administrative procedures and all other considerations that affect projected claim costs, including but not limited to the following:

(A) Definition of insured events;

(B) Covered long-term care facilities;

(C) Existence of home care and home care coverage. For purposes of this paragraph, "home" has the meaning provided in OAR 836-052-0606;

(D) Definition of facilities;

(E) Existence or absence of barriers to eligibility;

(F) Premium waiver provisions;

(G) Renewability;

(H) Ability to raise premiums;

(I) Marketing methods;

(J) Underwriting procedures;

(K) Claims adjustment procedures;

(L) Waiting periods;

(M) Maximum benefits;

(N) Availability of eligible facilities;

(O) Margins in claim costs;

(P) Optional nature of benefit;

(Q) Delay in eligibility for benefit;

(R) Inflation protection provisions; and

(S) Guaranteed insurability option.

(2) For purposes of section (1) of this rule, an applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a qualified actuary.

(3) When long term care benefits are provided other than as in section (1) of this rule, reserves shall be determined in accordance with OAR 836-031-0200 to 836-031-0300.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240

Stats. Implemented: ORS 742.003, 742.005, 743.650, 743.655 & 743.656.

Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; ID 1-1996, f. & cert. ef. 1-12-96;

Renumbered from 836-052-0545, ID 3-2005, f. & cert. ef. 3-1-05

836-052-0666

Loss Ratio

(1) This rule applies to all long-term care insurance policies, certificates and riders except those that are subject to OAR 836-052-0566 and 836-052-0676.

(2) Benefits under long-term care insurance policies and riders shall be deemed reasonable in relation to premiums only if the expected loss ratio is at least 60 percent and is calculated in a manner providing for adequate reserving of the long-term care insurance risk.

(3) In evaluating the expected loss ratio, an insurer shall consider all relevant factors, including:

(a) Statistical credibility of incurred claims experience and earned premiums;

(b) The period for which rates are computed to provide coverage;

(c) Experienced and projected trends;

(d) Concentration of experience within early policy duration;

(e) Expected claim fluctuation;

(f) Experience refunds, adjustments or dividends;

(g) Renewability features;

(h) All appropriate expense factors;

(i) Interest;

(j) The experimental nature of coverage;

(k) Policy reserves;

(l) The mix of business by risk classification;

(m) Product features, such as long elimination periods, high deductibles and high maximum limits.

(4) The loss ratio requirements under this rule apply with respect to Oregon policyholders. Subject to the approval of the Director, an insurer may use national or regional loss ratio experience to modify the Oregon experience when the experience for Oregon policyholders is small and statistically unreliable. Oregon experience and national or regional experience must be submitted in separate tables and the modification approved by the Director.

(5) The experience under all policy and rider forms insuring a class of insureds with similar benefits and underwriting requirements shall be combined when demonstrating compliance with the requirements of this section.

(6) The effect on loss ratios of all requirements necessary to qualify for benefits shall be included in the calculations required under this rule.

(7) Sections (1) to (6) of this rule do not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid if the policy complies with all of the following provisions:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, is guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of ORS 743.204 or 743.275;

(c) The policy or rider meets the Long-Term Care disclosure requirements;

(d) Any life policy illustration meets the applicable requirements of OAR 836-051-0500 to 836-051-0600; and

(e) The actuarial memorandum filed with the insurance department must be submitted by a qualified actuary in good standing with the American Academy of Actuaries. The memorandum must include:

(A) A description of the basis on which the long-term care rates were determined;

(B) Description of the basis for the reserves;

(C) A summary of the type of policy, benefits, renewability, general marketing method and limits on ages of issuance;

(D) A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

(E) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

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(F) The estimated average annual premium per policy and the average issue age;

(G) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(H) A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

Stat. Auth.: ORS 731, 742 & 743

Stats. Implemented: ORS 742.005 & 743.655(1)(a)

Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0530, ID 3-2005, f. & cert. ef. 3-1-05

836-052-0676

Premium Rate Schedule Increases

(1) This rule applies as follows:

(a) Except as provided in subsection (b) of this section, this rule applies to any long-term care insurance policy or certificate issued in this state on or after September 1, 2005.

(b) For certificates issued on or after March 1, 2005 under a group long-term care insurance policy as defined in ORS 743.652(6)(a) that was in force on March 1, 2005, this rule applies on the policy anniversary following March 1, 2006.

(2) An insurer shall obtain approval of a premium rate schedule increase from the Director, including an exceptional increase as defined in section (3) of this rule prior to the notice to the policyholders and shall include the following in the submission to the Director:

(a) Information required by OAR 836-052-0556;

(b) Certification by a qualified actuary that:

(A) If the requested premium rate schedule increase is implemented and the underlying assumptions that reflect moderately adverse conditions are realized, no further premium rate schedule increases are anticipated; and

(B) The premium rate filing is in compliance with this rule.

(c) An actuarial memorandum justifying the rate schedule change request that includes:

(A) Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale, as follows:

(i) Annual values for the five years preceding and the three years following the valuation date shall be provided separately;

(ii) The projections shall include the development of the lifetime loss ratio according to OAR 836-052-0666, unless the rate increase is an exceptional increase;

(iii) The projections shall demonstrate compliance with section (3) of this rule; and

(iv) For exceptional increases:

(I) The projected experience must be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(II) In the event the Director determines as provided in OAR 836-052-0505(1)(a) that offsets may exist, the insurer shall use appropriate net projected experience;

(B) Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

(C) Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the insurer have been relied on by the actuary;

(D) A statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

(E) Composite rates reflecting projections of new certificates, in the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase.

(d) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the Director; and

(e) Sufficient information for review and approval of the premium rate schedule increase by the Director.

(3) As used in this rule, "exceptional increase" means only those increases filed by an insurer as exceptional for which the Director determines the need for the premium rate increase is justified, owing to changes in statutes or rules applicable to long-term care insurance in this state or owing to increased and unexpected utilization that affects the majority of insurers of similar products. An exceptional increase is subject to the following provisions:

(a) Except as provided in this rule, an exceptional increase is subject to the same requirements as other premium rate schedule increases.

(b) The Director may request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase.

(c) The Director, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

(4) All premium rate schedule increases shall be determined in accordance with the following requirements:

(a) Each exceptional increase shall provide that 70 percent of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

(b) Each premium rate schedule increase shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(A) The accumulated value of the initial earned premium times 58 percent;

(B) 85 percent of the accumulated value of prior premium rate schedule increases on an earned basis;

(C) The present value of future projected initial earned premiums times 58 percent; and

(D) 85 percent of the present value of future projected premiums not in paragraph (C) of this subsection on an earned basis;

(c) In the event that a policy form has both exceptional and other increases, the values in subsection (b)(B) and (D) of this section will also include 70 percent for exceptional rate increase amounts; and

(d) All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate specified in ORS 733.310 for the valuation of life insurance issued on the same date as the long-term care insurance. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

(5) For each rate increase that is implemented, the insurer shall file for review and approval by the Director updated projects, as defined in section (2)(c)(A) of this rule, annually for the next three years and include a comparison of actual results to projected values. The Director may extend the period to greater than three years if actual results are not consistent with projections values from prior projections. For group insurance policies that meet the conditions in section (12) of this rule, the projections required by this section shall be provided to the policyholder in lieu of filing with the Director.

(6) If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in section (2)(c)(A) of this rule, shall be filed for review and approval by the Director every five years following the end of the required period in section (5) of this rule. For group insurance policies that meet the conditions in section (12) of this rule, the projections required by this section shall be provided to the policyholder in lieu of filing with the Director.

(7)(a) If the Director has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projection under moderately adverse conditions demonstrates that incurred claims will not exceed proportions of premiums specified in section (4) of this rule, the Director may require the insurer to implement any of the following:

(A) Premium rate schedule adjustments; or

(B) Other methods to reduce the difference between the projected and actual experience.

(b) In determining whether the actual experience adequately matches the projected experience, consideration shall be given to section (2)(c)(E) of this rule, if applicable.

(8) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

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(a) A plan, subject to Director approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increase, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect, otherwise the Director may impose the condition in section (9) of this rule; and

(b) The original anticipated lifetime loss ratio and the premium rate schedule increase that would have been calculated according to section (4) of this rule had the greater of the original anticipated lifetime loss ratio or 58 percent been used in the calculations described in section (4)(a)(A) and (C) of this rule.

(9)(a) For a rate increase filing that meets the following criteria, the Director shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

(A) The rate increase is not the first rate increase requested for the specific policy form or forms;

(B) The rate increase is not an exceptional increase; and

(C) The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(b) In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the Director may determine that a rate spiral exists. Following the determination that a rate spiral exists:

(A) The Director may require the insurer to offer, without underwriting, to all in force insureds subjected to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

(B) An offer under paragraph (A) of this subsection shall:

(i) Be subject to the approval of the Director;

(ii) Be based on actuarially sound principles, but not be based on attained age;

(iii) Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy; and

(iv) Shall credit any unearned premium to the new coverage.

(C) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

(i) The maximum rate increase determined based on the combined experience; and

(ii) The maximum rate increase determined based only on the experience of the insureds originally issued the form plus ten percent.

(10) If the Director determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the Director may, in addition to the provisions of section (9) of this rule, prohibit the insurer from doing either of the following:

(a) Filing and marketing comparable coverage for a period of up to five years; or

(b) Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

(11) Sections (1) to (10) of this rule do not apply to policies for which long-term care benefits provided by the policy are incidental if the policy complies with all of the provisions of this section. For the purpose of this section, "Incidental" means that the value of the long-term care benefits provided is less than ten percent of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue. The provisions are as follows:

(a) The interest credited internally to determine cash value accumulations, including long-term care, if any, must be guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy.

(b) The portion of the policy that provides insurance benefits other than long-term care coverage must meet the nonforfeiture requirements for those benefits.

(c) The policy must meet the disclosure requirements under OAR 836-052-0706 for long-term care insurance policies.

(d) The portion of the policy that provides insurance benefits other than long term care coverage must meet the requirements as applicable for life and annuity policies.

(e) An actuarial memorandum that includes the following items must be filed with the Director:

(A) A description of the basis on which the long term care rates were determined.

(B) A description of the basis for the reserves.

(C) A summary of the type of policy, benefits, renewability, general marketing method and limits on ages of issuance.

(D) A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any.

(E) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives.

(F) The estimated average annual premium per policy and the average issue age;

(G) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs.

(H) A description of the effect of the long term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long term care claim status.

(11) Sections (6) and (8) of this rule do not apply to group insurance policies as defined in ORS 743.652(6)(a) when:

(a) The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

(b) The policyholder and not the certificate holders pays a material portion of the premium, which shall not be less than 20 percent of the total premium for the group in the calendar year prior to the year a rate increase is filed.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240

Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655 & 743.656, 746.240

Hist.: ID 3-2005, f. & cert. ef. 3-1-05

836-052-0686

Filing Requirements for Out-of-State Group Policies

Each insurer providing group long-term care insurance benefits to a resident of this state under an exempt master group policy pursuant to ORS 731.486 issued outside of this state shall file, for informational purposes, a copy of the policy form filed for approval with the state of domicile of the insurer and any rider or certificate used in this state in accordance with the filing requirements and procedures applicable to group entities filing in this state.

Stat. Auth.: ORS 731, 742 & 743

Stats. Implemented: ORS 731.244 & 743.653

Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0550, ID 3-2005, f. & cert. ef. 3-1-05

836-052-0696

Filing Requirements for Advertising

Every insurer providing long-term care insurance or benefits in this state shall provide to the Director a copy of any long-term care insurance advertisement intended for use in this state, whether through the written, radio or television medium, for review or approval by the Director as authorized under ORS 742.009 and other state law. Each advertisement shall comply with all applicable laws and rules of this state.

Stat. Auth.: ORS 731, 742 & 743

Stats. Implemented: ORS 742.009 & 743.655(1)(a)

Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0620, ID 3-2005, f. & cert. ef. 3-1-05

836-052-0706

Standards for Marketing

(1) Every insurer marketing long-term care insurance coverage in this state, directly or through its insurance producers, shall:

(a) Establish marketing procedures and insurance producer training requirements to assure that:

(A) Any marketing activities, including any comparison of policies by its insurance producers, will be fair and accurate;

(B) Excessive insurance is not sold or issued; and

(b) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy, or certificate if a group, the following:

"Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

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(c) Provide copies of the disclosure forms required in OAR 836-052-0556(4) (**Exhibits 1 and 2**) to the applicant.

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has health or long-term care insurance and the types and amounts of any such insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has health insurance is not required.

(e) Establish auditable procedures for verifying compliance with this section.

(f) At solicitation, provide written notice to the prospective policyholder and certificate holder that a senior insurance counseling program approved by the Director is available and the name, address and telephone number of the program.

(g) For long-term care insurance policies, certificates and riders, use the terms "noncancellable" or "level premium" only when the policy, certificate or rider conforms to OAR 836-052-0526(1)(c).

(h) Provide an explanation of contingent benefit upon lapse provided for in OAR 836-052-0746(4)(c).

(2) In addition to the practices prohibited under ORS Chapter 746, the following acts and practices are prohibited:

(a) Twisting, which includes knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer;

(b) High pressure tactics, which include the employing of any method of marketing having the effect of inducing or tending to induce the purchase of insurance through force, fright or threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance;

(c) Cold lead advertising, which is making use directly or indirectly of any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurer or insurance producer.

(d) Misrepresentation of a material fact in selling or offering to sell a long-term care insurance policy.

(3) An association, as defined in ORS 743.652(6)(b), and the insurer endorsing or selling long-term care insurance are subject to the following requirements and obligations:

(a) The primary responsibility of an association shall be to educate its members concerning long-term care issues in general so that its members can make informed decisions. An association shall provide objective information regarding long term care insurance policies or certificates endorsed or sold by the association to ensure that its members receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.

(b) The insurer shall file with the Director the following material:

(A) The policy, certificate, and riders;

(B) A corresponding outline of coverage; and

(C) All advertisements requested by the Director.

(c) The association shall disclose in any long-term care insurance solicitation:

(A) The specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and

(B) A brief description of the process under which the policies and the insurer issuing the policies were selected.

(d) If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members.

(e) The board of directors of an association selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer.

(f) The association shall also:

(A) At the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates and update the examination thereafter in the event of material change;

(B) Actively monitor the marketing efforts of the insurer and its producers; and

(C) Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies, certificates, or riders.

(g) Subsection (f) of this section does not apply to qualified long-term care insurance contracts.

(h) A group long term care insurance policy, certificate or rider may not be issued to an association unless the insurer files with the director the information required in this section.

Stat. Auth.: ORS 731, 742 & 743

Stats. Implemented: ORS 743.655(1)(a) & 746.240

Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0640, ID 3-2005, f. & cert. ef. 3-1-05

836-052-0716

Disclosure Statement

(1) An insurer offering long-term care insurance coverage in this state shall deliver a disclosure statement as provided in this rule to the insured under a long-term care insurance policy, rider or certificate or separately but at the same time as delivery of the policy, rider or certificate.

(2) The disclosure statement must include the following matters:

(a) A statement of the premium. The statement must give the total annual premium for the policy, rider or certificate and, if the premium varies with an applicant's choice among benefits options, must indicate the portion of annual premium corresponding to each benefit option;

(b) The terms of renewability. The terms used to describe renewability must be used in accordance with OAR 836-052-0526. The terms must be stated on the first page of the policy and must be one of the following, defined as follows:

(A) A policy is "guaranteed renewable" when renewal cannot be declined by the insurer for any reason, but the insurer can revise rates on a class basis;

(B) A policy is "noncancellable" if the insurer cannot decline renewal and cannot revise rates.

(c) Initial and subsequent conditions of eligibility;

(d) A statement of nonduplication of coverage provisions;

(e) Coverage of dependents;

(f) Preexisting conditions;

(g) Termination of insurance;

(h) Continuation or conversion of coverage;

(i) Any probationary periods;

(j) Limitations, exceptions and reductions;

(k) Elimination periods;

(l) Requirements for replacement;

(m) Recurrent conditions;

(n) Definitions of terms;

(o) Option to apply for new benefits

(3) The disclosure statement:

(a) Must be printed in not less than twelve point type;

(b) May not contain material of an advertising nature.

(4) The disclosure statement must include the following statement:

CAUTION: Issuance of this long-term care insurance (policy) (rider) (certificate) is based upon your answers to the questions on your application. (A copy of your (application) (enrollment form) is enclosed.) -OR- (You retained a copy of your (application) (enrollment form) when you applied.) If your answers are incorrect or untrue, the company may deny benefits or rescind your policy.

(5) When long term care benefits are provided through early payment of a portion of a life insurance policy death benefit, the disclosure statement must include the following statements:

(a) "NOTICE: The long term care benefits described here are provided as part of a life insurance policy. Your premiums pay for life insurance. Whenever long term care benefits are paid from this policy, the payments will reduce the available cash value and death benefit under the life insurance policy";

(b) A statement of disclosure regarding tax consequences, as described in OAR 836-052-0546(6).

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240

Stats. Implemented: ORS 742.003, 742.005, 743.650, 743.655 & 743.656

Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; ID 1-1996, f. & cert. ef. 1-12-96; Renumbered from 836-052-0605, ID 3-2005, f. & cert. ef. 3-1-05

836-052-0726

Suitability

(1) This rule does not apply to life insurance policies that accelerate benefits for long-term care.

(2) Each insurer shall:

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(a) Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(b) Train its insurance producers in the use of its suitability standards; and

(c) Maintain a copy of its suitability standards and make them available for inspection upon request by the Director.

(3)(a) To determine whether an applicant meets the standards developed by the insurer, an insurance producer and insurer shall develop procedures that take the following into consideration:

(A) The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

(B) The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

(C) The values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

(b) The insurer, and when an insurance producer is involved, the insurance producer, shall make reasonable efforts to obtain the information set out in subsection (a) of this section. The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the insurer shall contain, at a minimum, the information in the format contained in OAR 836-052-0556(4), Exhibit 1, in not less than 12 point type. The insurer may request the applicant to provide additional information to comply with its suitability standards. A copy of the insurer's personal worksheet shall be filed with the Director.

(c) A completed personal worksheet shall be returned to the insurer prior to the insurer's consideration of the applicant for coverage, except that the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

(d) An insurer or insurance producer shall not sell or disseminate information obtained through the personal worksheet outside the insurer or agency.

(4) An insurer shall use the suitability standards it has developed pursuant to this rule in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

(5) An insurance producer shall use the suitability standards developed by the insurer in marketing long-term care insurance.

(6) At the same time that the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall also be provided to the applicant. The form shall be in the format contained in Exhibit 1, in not less than 12 point type.

(7) If the insurer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the insurer may reject the application. In the alternative, the insurer shall send the applicant a letter similar to Exhibit 2. However, if the applicant has declined to provide financial information, the insurer may use some other method to verify the applicant's intent. The insurer shall make either the applicant's returned letter or a record of the alternative method of verification a part of the applicant's file.

(8) The insurer shall report annually by May 1 to the Director the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655 & 743.656, 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05

836-052-0736

Prohibition Against Preexisting Conditions, Waiting Periods and Probationary Periods in Replacement Policies and Certificates

(1) If an individual long-term care insurance policy replaces another long-term care insurance policy, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods and probationary periods in the new long-term care insurance policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

(2) If a group long-term care policy is replaced by another group long-term care policy purchased by the same policyholder, the succeeding insurer 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, waiting periods and probationary periods that would have been covered under the group policy being replaced.

Stat. Auth.: ORS 731, 742 & 743
Stats. Implemented: ORS 743.655(1)(a)
Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0575, ID 3-2005, f. & cert. ef. 3-1-05

836-052-0746

Nonforfeiture Benefit Requirement

(1) This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

(2) A long-term care policy, certificate or rider offered with nonforfeiture benefits must have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits, subject to the following:

(a) The nonforfeiture benefit included in the offer must be the benefit described in section (6) of this rule; and

(b) The offer must be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

(3) If the offer required to be made is rejected, the insurer shall provide the contingent benefit upon lapse described in this rule.

(4)(a) After rejection of an offer for an individual or group policy without nonforfeiture benefits issued after the effective date of this section, the insurer shall provide a contingent benefit upon lapse.

(b) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificate holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(c) The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in this subsection based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, a policyholder shall be notified at least 30 days prior to the due date of the premium reflecting the rate increase. [Table not included. See ED. NOTE.]

(d) On or before the effective date of a substantial premium increase as defined in subsection (c) of this section, the insurer shall:

(A) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(B) Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the provisions of section (6) of this rule. This option may be elected at any time during the 120-day period referenced in subsection (c) of this section; and

(C) Notify the policyholder or certificate holder that a default or lapse at any time during the 120-day period referenced in subsection (c) of this section shall be deemed to be the election of the offer to convert in paragraph (B) of this subsection.

(6) Benefits that must be continued as nonforfeiture benefits, including contingent benefits upon lapse, are described in this section as follows:

(a) For purposes of this section, attained age rating is defined as a schedule of premiums starting from the issue date that increases age at least one percent per year prior to age 50, and at least three percent per year beyond age 50.

(b) For purposes of this section, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) must be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in subsection (c) of this section.

(c) The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of section (7) of this rule.

(d)(A) The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.

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(B) Notwithstanding paragraph (a) of this subsection, for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

(i) The end of the tenth year following the policy or certificate issue date; or

(ii) The end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(e) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(7) All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits that would be payable if the policy or certificate had remained in premium paying status.

(8) There shall be no difference in the minimum nonforfeiture benefits as required under this rule for group and individual long term care insurance policies.

(9) The requirements set forth in this rule become effective March 1, 2006, after adoption of this provision and shall apply as follows:

(a) Except as provided in subsection (b) of this section, the provisions of this rule apply to any long-term care policy issued in this state on or after March 1, 2005.

(b) For certificates issued on or after March 1, 2006 under a group long-term care insurance policy as defined in ORS 743.652(6)(a), which policy was in force March 1, 2005, the provisions of this rule do not apply.

(10) Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of OAR 836-052-0666, treating the policy as a whole.

(11) To determine whether contingent nonforfeiture upon lapse provisions are triggered under section 5(c) of this rule, a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

(12) A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

(a) The nonforfeiture provision shall be appropriately captioned;

(b) The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the Director for the same contract form; and

(c) The nonforfeiture provision shall provide at least one of the following:

(A) Reduced paid-up insurance;

(B) Extended term insurance;

(C) Shortened benefit period; or

(C) Other similar offerings approved by the Director.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240

Stats. Implemented: ORS 731.244,742.003, 742.005, 742.009, 743.010(3), 743.013(3),

743.650, 743.653, 743.655 & 743.656, 746.240

Hist.: ID 3-2005, f. & cert. ef. 3-1-05

836-052-0756

Standards for Benefit Triggers

(1) A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.

(2)(a) Activities of daily living shall include at least the following as defined in OAR 836-052-0516 and in the policy:

(A) Bathing;

(B) Continence;

(C) Dressing;

(D) Eating;

(E) Toileting; and

(F) Transferring;

(b) An insurer may use activities of daily living to trigger covered benefits in addition to those contained in subsection (a) of this section as long as they are defined in the policy.

(c) For purposes of this rule, a cognitive impairment must be a result of a clinically diagnosed organic dementia, including but not limited to

Alzheimer's Disease or a related progressive degenerative dementia of an organic origin such as the following, by way of example only:

(A) Parkinson's Disease;

(B) Huntington's Disease;

(C) Creutzfeldt-Jakob Disease;

(D) Picks Disease;

(E) Multi-infarct dementia;

(F) Normal pressure hydrocephalus;

(G) Multiple sclerosis;

(H) Inoperable tumors of the brain.

(3) An insurer may use additional provisions for determining when benefits are payable under a policy, certificate or rider, but the provisions shall not restrict, and are not in lieu of, the requirements contained in sections (1) and (2) of this rule.

(4) For purposes of this rule, the determination of a deficiency shall not be more restrictive than:

(a) Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(b) Requiring that if the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

(5) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

(6) A long term care insurance policy shall include a clear description of the process for appealing and resolving benefit determinations.

(7) The requirements set forth in this rule are effective March 1, 2006, except for the following:

(a) The requirements of this rule apply to a long-term care policy or rider issued in this state on or after March 1, 2005.

(b) This rule does not apply to a certificate issued on or after March 1, 2006, under a group long-term care insurance policy as defined in ORS 743.652(6)(a) that was in force on March 1, 2005.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240

Stats. Implemented: ORS 731.244,742.003, 742.005, 742.009, 743.010(3), 743.013(3),

743.650, 743.653, 743.655 & 743.656, 746.240

Hist.: ID 3-2005, f. & cert. ef. 3-1-05

836-052-0766

Additional Standards for Benefit Triggers for Qualified Long-Term Care Insurance Contracts

(1) For purposes of this section the following definitions apply:

(a) "Qualified long-term care services" means services that meet the requirements of Section 7702(c)(1) of the Internal Revenue Code of 1986, as amended, as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(2)(a) "Chronically ill individual" has the meaning prescribed for this term by section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:

(i) Being unable to perform (without substantial assistance from another individual) at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity; or

(ii) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(b) The term "chronically ill individual" shall not include an individual otherwise meeting these requirements unless within the preceding twelve-month period a licensed health care practitioner has certified that the individual meets these requirements.

(3) "Licensed health care practitioner" means a physician, as defined in Section 1861(r)(1) of the Social Security Act, a registered professional nurse, licensed social worker or other individual who meets requirements prescribed by the Secretary of the Treasury.

(4) "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

(5) A qualified long term care insurance contract shall pay only for qualified long term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.

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(6) A qualified long-term care insurance contract shall condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or to severe cognitive impairment.

(7) Certifications regarding activities of daily living and cognitive impairment required pursuant to section (6) of this rule shall be performed by the following licensed or certified professionals: physicians, registered professional nurses, licensed social workers, or other individuals who meet requirements prescribed by the Secretary of the Treasury.

(8) Certifications required pursuant to section (6) of this rule may be performed by a licensed health care professional at the direction of the insurer as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the 90-day period.

(9) A qualified long-term care insurance contract shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010(3), 743.013(3), 743.650, 743.653, 743.655 & 743.656, 746.240
Hist.: ID 3-2005, f. & cert. ef. 3-1-05

836-052-0776

Standard Format Outline of Coverage

(1) When long-term care insurance coverage is offered in this state, the offeror shall provide an outline of coverage as required in this rule to each prospective applicant as follows:

(a) In the case of a solicitation by an insurance producer, prior to the presentation of an application or enrollment form;

(b) In the case of a direct response solicitation, in conjunction with any application or enrollment form.

(2) The following requirements apply to the outline:

(a) The outline must be presented in the format prescribed in Exhibit 1 to this rule and must be a free-standing document;

(b) The outline must be printed in no smaller than ten-point type;

(c) The outline may not contain material of an advertising nature;

(d) Text that is capitalized or underscored in the standard format outline of coverage in **Exhibit 1** to this rule may be emphasized by other means that provide prominence equivalent to the capitalization or under-scoring.

(e) Use of the text and sequence of text of the standard format outline of coverage in **Exhibit 1** is mandatory, unless otherwise specifically indicated.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 731.244, 742.023, 743.013, 743.655, 743.656 & 746.240
Stats. Implemented: ORS 742.003, 742.005, 743.650, 743.655 & 743.656.
Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; ID 1-1996, f. & cert. ef. 1-12-96;
Renumbered from 836-052-0600, ID 3-2005, f. & cert. ef. 3-1-05

836-052-0786

Requirement to Deliver Shopper's Guide

(1) A long-term care insurance Shopper's Guide in a form approved by the Director shall be provided to all prospective applicants of a long term care insurance policy, certificate or rider as provided in this rule.

(3) For the purpose of approving the form of a guide under this section, the Director may consider the Shopper's Guide developed by the National Association of Insurance Commissioners, or any other guide, as a comparative standard.

(4) The Shopper's Guide shall be provided as follows:

(a) In the case of insurance producer solicitations, an insurance producer must deliver the Shopper's Guide prior to the presentation of an application or enrollment form.

(b) In the case of direct response solicitations, the Shopper's Guide must be presented in conjunction with any application or enrollment form.

(5) The requirement of a Shopper's Guide under this rule does not apply with respect to a life insurance policy or rider containing accelerated long-term care benefits but the insurer or producer shall furnish the policy summary required under OAR 836-052-0716.

Stat. Auth.: ORS 731, 742 & 743
Stats. Implemented: ORS 743.655(1)(a)
Hist.: ID 20-1990, f. 12-13-90, cert. ef. 1-1-91; Renumbered from 836-052-0610, ID 3-2005, f. & cert. ef. 3-1-05

Adm. Order No.: DOC 2-2005

Filed with Sec. of State: 2-24-2005

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Rules Repealed: 291-180-0060, 291-180-0065, 291-180-0070, 291-180-0071, 291-180-0072, 291-180-0073, 291-180-0075, 291-180-0080, 291-180-0085, 291-180-0090, 291-180-0095

Subject: These rule modifications are necessary to bring Oregon into compliance with the Interstate Compact for Adult Offender Supervision as required by ORS 144.600. The national commission overseeing this new compact has promulgated new rules to regulate the movement of probationers and parolees between states. These rules implement those national rules in Oregon and prescribe how interstate movement of offenders will occur.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-180-0106

Authority, Purpose, Policy, and Applicability

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 144.600, 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: These rules establish Oregon's participation in the Interstate Compact for Adult Offender Supervision (ICAOS) and the processing and management of offenders transferring into or out of Oregon under the provisions of this compact. They provide guidance to county community corrections agencies and Department of Corrections institutions regarding the transfer and management of offenders sent or received from other states under this compact.

(3) Policy: It is the policy of the Department of Corrections to fully participate in the Interstate Compact for Adult Offender Supervision in accordance with ORS 144.600 and comply with rules lawfully promulgated by the National Interstate Commission within the inherent limitations of resources.

(4) Applicability: These rules apply to all offenders relocating to other states, applying for or receiving interstate compact services under the Interstate Compact for Adult Offender Supervision.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0115

Definitions (1.101 ICAOS)

(1) Abscond: To be absent from the offender's approved place of residence or employment with the intent of avoiding supervision.

(2) Adult: Both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(3) Application Fee: A reasonable sum of money charged an interstate compact offender by the sending state for each application for transfer prepared by the sending state.

(4) Arrival: To report to the location and officials designated in reporting instructions given to an offender at the time of the offender's departure from a sending state under an interstate compact transfer of supervision.

(5) By-laws: Those by-laws established by the Interstate Commission for Adult Offender Supervision for its governance, or for directing or controlling the Interstate Commission's actions or conduct.

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(6) Compact Administrator: The individual in each compacting state appointed under the terms of this compact and responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission for Adult Offender Supervision, and policies adopted by the State Council under this compact.

(7) Compact Commissioner or Commissioner: The voting representative of each compacting state appointed under the terms of the Interstate Compact for Adult Offender Supervision as adopted in the member state.

(8) Compliance: An interstate compact offender is abiding by all terms and condition of supervision, including payment of restitution, family support, fines, court costs or other financial obligations imposed by the sending state.

(9) Deferred Sentence: A sentence the imposition of which is postponed pending the successful completion by the offender of the terms and conditions of supervision ordered by the court.

(10) Detainer: An order to hold an offender in custody.

(11) Discharge: The final completion of the sentence that was imposed on an offender by the sending state.

(12) Extradition: The return of a fugitive to a state in which the offender is accused, or has been convicted of, committing a criminal offense, by order of the governor of the state to which the fugitive has fled to evade justice or escape prosecution.

(13) ICAOS: Interstate Compact for Adult Offender Supervision. The numeric reference in parenthesis next to this acronym refers to the section number of the national ICAOS rules that apply to these rules.

(14) Offender: For purposes of this rule, an adult placed under, or made subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.

(15) Plan of supervision: The terms, under which an offender will be supervised, including proposed residence, proposed employment or viable means of support and the terms and conditions of supervision.

(16) Probable Cause Hearing: A hearing in compliance with the decisions of the U.S. Supreme Court, conducted on behalf of an offender accused of violating the terms or conditions of the offender's parole or probation.

(17) Receiving State: A state to which an offender requests transfer of supervision or is transferred.

(18) Reporting Instructions: The orders given to an offender by a sending or receiving state directing the offender to report to a designated person or place, at a specified date and time, in another state. Reporting instructions shall include place, date, and time on which the offender is directed to report in the receiving state.

(19) Resident: person who has continuously inhabited a state for at least one year prior to the commission of the offense for which the offender is under supervision, and intends that such state shall be the person's principal place of residence, and has not, unless incarcerated, relocated to another state or states for a continuous period of six months or more with the intent to establish a new principal place of residence.

(20) Resident Family: A parent, grandparent, aunt, uncle, adult child, adult sibling, spouse, legal guardian, or step-parent who has resided in the receiving state for 180 days or longer as of the date of the transfer request; and indicates willingness and ability to assist the offender as specified in the plan of supervision.

(21) Retaking: The act of a sending state in physically removing an offender, or causing to have an offender removed, from a receiving state.

(22) Rules: Acts of the Interstate Commission, which have the force and effect of law in the compacting states, and are promulgated under the Interstate Compact for Adult Offender Supervision, and substantially affect interested parties in addition to the Interstate Commission.

(23) Sending State: A state requesting the transfer of an offender, or which transfers supervision of an offender, under the terms of the Compact and its rules.

(24) Shall: That a state or other actor is required to perform an act, the non-performance of which may result in the imposition of sanctions as permitted by the Interstate Compact for Adult Offender Supervision, its by-laws and rules.

(25) Significant Violation: An offender's failure to comply with the terms or conditions of supervision that, if occurring in the receiving state, would result in a request for revocation of supervision.

(26) Special Condition: A condition or term that is added to the standard conditions of parole or probation by either the sending or receiving state.

(27) Subsequent Receiving State: A state to which an offender is transferred that is not the sending state or the original receiving state.

(28) Substantial Compliance: An offender is sufficiently in compliance with the terms and conditions of his or her supervision so as not to result in initiation of revocation of supervision proceedings by the sending state.

(29) Supervision: The authority or oversight exercised by supervising authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which the offender is required to report to or be monitored by supervising authorities, and includes any condition, qualification, special condition or requirement imposed on the offender at the time of the offender's release to the community or during the period of supervision in the community.

(30) Supervision Fee: A fee collected by the receiving state for the supervision of an offender.

(31) Temporary Travel Permit: The written permission granted to an offender to travel outside the receiving state. Temporary travel permits shall not exceed 31 days and are not repeatedly renewable except as provided for in these rules. All temporary travel permits shall include the offender's crime of conviction and a beginning and ending date.

(32) Temporary Travel Permit (Victim Sensitive Cases): In "victim-sensitive" cases, the receiving state shall give notice of offender movement to the sending state regarding the issuance of a temporary travel permit. Travel permits may not exceed 31 days and must have a beginning and ending date.

(33) Travel permit: The written permission granted to an offender authorizing the offender to relocate from one state to another. All travel permits shall include the offender's crime of conviction.

(34) Victim: A natural person or the family of a natural person who has suffered physical injury or serious emotional harm as a result of an act or omission of an offender.

(35) Victim-Sensitive: A designation made by the sending state in accordance with its definition of "crime victim" under the statutes governing the rights of crime victims in the sending state.

(36) Waiver: The voluntary relinquishment, in writing, of a known constitutional right or other right, claim or privilege by an offender.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0125

Authority of Oregon Interstate Compact (2.101 ICAOS)

(1) The acceptance, rejection or termination of supervision of an offender under the compact requires the involvement and concurrence of the Oregon Compact Administrator or their designated deputy.

(2) All formal written, electronic or oral communication regarding an offender under this compact shall be made only through the Oregon Compact Administrator or their designated deputy.

(3) Transfer, modification or termination of supervision authority for an offender under this compact may be authorized only with the involvement and concurrence of the Oregon Compact Administrator or their designated deputy.

(4) Violation reports or other notices regarding offenders under this compact shall be transmitted only through direct communication between the compact offices of the sending and receiving states.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0135

Data Collection and Reporting (2.102 ICAOS)

The Oregon Compact Office shall gather, maintain and report as requested to the national compact office all required data regarding the transfer and supervision of offenders supervised under this compact.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0145

Interstate Compact for Adult Offender Supervision Dues (2.103 ICAOS)

Oregon shall pay membership dues to the Interstate Compact for Adult Offender Supervision as established by the dues formula lawfully promulgated by the National Compact Commission.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

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Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0155

Forms (2.104 ICAOS)

Oregon shall use the forms and electronic information system authorized by the National Compact for all communications regarding offenders between or among states.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0165

Communication Preferences

While these rules permit communication and notice by "telephone, electronic mail or telefax," whenever possible electronic transmission by email is the preferred mode of communication and transfer of documents. For greatest clarity and usability, all documents must be electronically generated.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0175

Transfer of Offenders Under This Compact (2.110 ICAOS)

No state shall permit a person who is eligible for transfer under this compact to relocate to another state except as provided by the Interstate Compact for Adult Offender Supervision and these rules.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0185

Compact Eligible Destinations

(1) Services allowed under this compact are available only between sending and receiving states, United States possessions and territories who are signatory to the Interstate Compact for Adult Offender Supervision. This compact may not be used with non-members of the ICAOS or any foreign country.

(2) A current list of states, U.S. possessions and territories signatory to this compact may be obtained by contacting Oregon Interstate Compact or may be viewed at the ICAOS website at "<http://www.adultcompact.org>".

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0195

Adoption and Amendment to the ICAOS Rules

Additions or amendments to the ICAOS rules shall be adopted by a majority vote of the members of the Interstate Commission.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0205

Eligibility for Transfer of Supervision (3.101 ICAOS)

(1) At the discretion of the sending state, an offender who has three months or more or an indefinite period of supervision remaining shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the offender, pursuant to a valid plan of supervision is in substantial compliance with the terms of supervision in the sending state and:

(a) Is a resident of the receiving state; or

(b) Has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and

(c) Can obtain employment in the receiving state or has a visible means of support.

(2) Military Members: An offender who is a member of the military and has been transferred by the military to another state, and who meets the other criteria specified in (1)(c) shall be immediately eligible for transfer of supervision.

(3) Offenders That Live with Family Who Are Military Members: An offender who meets the other criteria specified in (1)(c) and who live with a family member who has been deployed to another state, shall be immediately eligible for transfer, provided that the offender will live with the military member in the receiving state.

(4) Employment of Family Member In Another State: An offender who meets the other criteria specified in (1)(c) and whose family member, with whom he or she resides, is transferred to another state and obtains full-time employment, shall be immediately eligible for transfer unless the

receiving state can show good cause for rejecting the transfer request, provided that the offender will live with the family member in the receiving state.

(5) A receiving state, for good cause shown, may consent to the transfer of supervision of an offender who does not otherwise qualify for transfer of supervision.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0215

Misdemeanants (2.105 ICAOS)

(1) Misdemeanants as defined below are eligible for transfer under the compact.

(2) For purposes of this rule, a misdemeanor is an offender whose sentence includes one year or more of supervision provided that all other criteria for transfer, as specified in the previous section, have been satisfied, and the instant offense includes one or more of the following:

(a) An offense in which a person has incurred direct or threatened physical or psychological harm;

(b) An offense that involves the use or possession of a firearm;

(c) A second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol;

(d) A sexual offense that requires the offender to register as a sex offender in the sending state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0225

Ineligible Offenders (2.106 ICAOS)

Persons subject to supervision pursuant to a pre-trial intervention program, bail, or similar program, are not eligible for transfer under the terms and conditions of this compact.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0235

Offenders Subject to Deferred Sentences (2.106 ICAOS)

Offenders subject to deferred sentences (i.e.: conditional discharges) are eligible for transfer of supervision under the same eligibility requirements, terms, and conditions applicable to all other offenders under this compact.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0245

Offenders on Furlough, Work Release (2.107 ICAOS)

A person who is released from incarceration under furlough, work-release, or other pre-parole program is not eligible for transfer under the compact.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0255

Offenders With Disabilities (2.108 ICAOS)

A receiving state shall continue to supervise offenders who become mentally ill or exhibit signs of mental illness or who develop a physical disability while supervised in the receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0265

Fugitives from Justice

Transfer investigations shall not be requested or accepted on offenders with outstanding warrants who are non-residents of the receiving state. Fugitive status is inconsistent with a proper "valid plan of supervision" and compliance with conditions of supervision. Exceptions may be granted by the Compact Administrator or their designee.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0275

Retaken Offenders

Previously compacted offenders, who were "retaken" at cost to Oregon, shall not be re-compacted until such time as costs of retaking have

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been repaid to Oregon. Exceptions may be granted by the Compact Administrator or their designee.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0285

Submission of Transfer Request to a Receiving State (3.102 ICAOS)

(1) Subject to the exception in the next section, a sending state seeking to transfer supervision of an offender to another state shall submit a completed transfer request with all required information to the receiving state prior to allowing the offender to leave the sending state.

(2) Subject to the exception in the next section, the receiving state shall be given the opportunity to investigate the proposed plan of supervision prior to allowing the offender to leave the sending state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0295

Acceptance of the Offender by Receiving State; Exception (3.103 ICAOS)

(1) A sending state shall not allow an offender under supervision in the sending state to relocate to a receiving state without the receiving state's acceptance of the transfer of supervision. Exception:

(2) A sending state may grant a travel permit to an offender who was living in the receiving state at the time of sentencing. This exception is not applicable to offenders released to supervision from prison.

(a) Prior to granting a travel permit to an offender under this exception, the sending state shall verify that the offender is living in the receiving state and shall immediately contact the receiving state's interstate compact office by telephone, telefax or electronic mail to request provisional reporting instructions.

(b) A travel permit, not to exceed seven days, may be issued to the offender to allow for the request and issuance of reporting instructions. A copy of the travel permit will be immediately forwarded to the receiving state by telefax or electronic mail and will expire either upon the offender's arrival in the receiving state or on the travel permit's expiration date. The sending state retains supervisory responsibility during this period. If the receiving rejects the transfer request or the travel permit's expiration date is reached, (6)(a) and (6)(b) shall apply.

(c) The sending state shall ensure that the offender sign all forms requiring the offender's signature prior to granting a travel permit to the offender. The sending state shall immediately transmit the signed forms electronically or by telefax to the receiving state. (3.107 ICAOS)

(d) The receiving state shall issue reporting instructions no later than two business days following receipt of such notification and request from the sending state.

(3) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions during the investigation of the offender's plan of supervision upon the offender's arrival in the receiving state.

(4) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than 15 calendar days following the granting to the offender of the reporting instructions.

(5) If the receiving state rejects the transfer request for an offender granted a travel permit, or if the sending state fails to send a completed transfer request by the 15th day following the granting of a travel permit, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request from the receiving state, direct the offender to return to the sending state by a date specified by the sending state.

(6) If the offender does not return to the sending state, the sending state shall initiate the retaking of the offender by issuing a warrant or an order to return no later than 10 calendar days following the offender's failure to appear in the sending state.

(7) The receiving state shall continue to supervise the offender until a warrant is issued or sending state notifies receiving state that offender has returned to sending state. (4.105 ICAOS)

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0305

Time Allowed for Investigation by Receiving State (3.104 ICAOS)

(1) A receiving state shall complete an investigation and respond to a sending state's request for offender's transfer of supervision no later than the 45th calendar day following receipt of a completed transfer request in

the receiving state's compact office. Receipt of completed transfer request shall be presumed to occur by the fifth business day following transmission.

(2) If a receiving state determines that an offender transfer request is incomplete, the receiving state shall notify the sending state of that determination and the nature of the incompleteness no later than five business days following receipt of the transfer request by the receiving state.

(3) A sending state that has been notified of an incomplete transfer request shall, within five business days following receipt of notice of incompleteness, remedy the incompleteness by providing the missing material or demonstrating good cause why the incompleteness cannot be remedied within five business days, which the receiving state shall consider. Receipt by the sending state of notice of incomplete transfer request shall be presumed to occur by the fifth business day following transmission by the receiving state.

(4) The 45-calendar-day period for investigation of and response to a sending state's request for transfer of an offender's supervision shall be suspended until the sending state supplies the missing material in the transfer request.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0315

Acceptance of Offender; Issuance of Reporting Instructions (3.1041 ICAOS)

(1) If a receiving state accepts transfer of the offender, the receiving state's acceptance shall include reporting instructions.

(2) Upon notice of acceptance of transfer by the receiving state, the sending state shall issue a travel permit to the offender and notify the receiving state of the offender's departure as required. (ICAOS 4.105)

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0325

Request for Transfer of a Paroling Offender (3.105 ICAOS)

(1) A sending state shall submit a completed request for transfer of a parole or post prison supervision offender to a receiving state no earlier than 120 days prior to the offender's planned prison release date.

(2) A sending state shall notify a receiving state of the offender's date of release from prison or if the recommendation for release of the offender has been withdrawn or denied.

(3) A receiving state may withdraw its acceptance of the transfer request if the offender does not report to the receiving state by the fifth calendar day following the offender's intended date of departure from the sending state.

(a) A receiving state that withdraws its acceptance because an offender fails to report, shall immediately notify the sending state.

(b) Following withdrawal of the receiving state's acceptance, if the sending state desires to reapply for transfer of a paroling offender, they must resubmit a new request for transfer of supervision.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0335

Request for Expedited Transfer (3.106 ICAOS)

(1) A sending state may request that a receiving state agree to an expedited transfer of an offender if the sending state believes that emergency circumstances exist and the receiving state agrees with that determination.

(a) A receiving state that agrees to expedited transfer of an offender shall immediately issue reporting instructions for the offender, and a sending state shall immediately issue a travel permit.

(b) The sending state shall ensure that the offender signs all compact transfer application forms requiring the offender's signature (see "Application for transfer of supervision"), prior to granting a travel permit to the offender. The sending state shall immediately transmit the signed forms electronically or by telefax to the receiving state.

(c) At the time of transmission of the signed forms, the sending state shall provide the receiving state with a copy of the offender's orders and conditions, documentation of the offender's residency, copy of any available pre-sentence report, copy of any order of protection, where applicable, and whether the offender is subject to sex offender registration in the sending state.

(2) The receiving state granting an expedited transfer shall assume responsibility for supervision of an offender granted reporting instructions during the investigation of the offender's plan of supervision upon the offender's arrival in the receiving state.

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(3) The sending state shall transmit a completed transfer request for an offender granted a travel permit no later than seven calendar days following the granting to the offender of the travel permit.

(4) If the receiving state rejects the transfer request for an offender granted a travel permit, or if the sending state fails to send a completed transfer request by the seventh calendar day following the granting of a travel permit, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state by a date specified by the sending state.

(5) If the offender does not return to the sending state, the sending state shall initiate the retaking of the offender no later than ten calendar days following the offender's failure to appear in the sending state.

(6) The receiving state shall continue to supervise the offender until a warrant is issued or sending state notifies receiving state that offender has returned to sending state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0345

Applications for Transfer of Supervision (Investigation Packets) (3.107 ICAOS)

An application for transfer of supervision of an offender shall contain the following information:

(1) Offender's full name and any aliases by which the offender is known;

(2) Indication of whether the offender seeks transfer to the receiving state based on residency in the receiving state, family residing in the receiving state, or consent of the receiving state;

(3) Name, address, and telephone number of family in the receiving state if the offender bases the transfer request on family's residency in the receiving state;

(4) Offender's proposed residence in the receiving state;

(5) Offender's current or prospective employer in the receiving state;

(6) Offender's criminal justice identification number in the sending state;

(7) Offender's date of birth;

(8) Offender's social security number, if known;

(9) County of conviction or imposition of supervision;

(10) Indication of the type of criminal justice supervision to which the offender has been sentenced;

(11) Instant offense in sufficient detail to describe the type and severity of offense and whether the charge has been reduced at the time of imposition of sentence;

(12) Offender's criminal history;

(13) Notice, if applicable, indicating that the supervision of the offender is a victim-sensitive matter;

(14) Date supervision is to begin, if known;

(15) Date supervision is to terminate, if known;

(16) Name and title of supervising officer;

(17) Signed "Offender Application for Interstate Compact Transfer" form, which shall include "Agreement to Return on Demand of the Sending State" and "Waiver of Extradition";

(18) Signed "Consent to Random Drug or Alcohol Testing and to Searches Based on Reasonable Suspicion" form;

(19) Signed "Authorization for Release of Medical and Psychological Information" form;

(20) Photograph of offender;

(21) Conditions of supervision;

(22) Any orders restricting the offender's contact with victims or any other person;

(23) Any known orders protecting the offender from contact with any other person;

(24) Information as to whether the offender is subject to sex offender registry requirements in the sending state along with supportive documentation;

(25) Judgment and commitment documents;

(26) Pre-sentence investigation report, if available;

(27) Supervision history, if available;

(28) Information relating to any court-ordered financial obligations, including but not limited to, fines, court costs, restitution, and family support; the balance that is owed by the offender on each; and the address of the office to which payment must be made.

(29) Medical information, if available; and

(30) Psychological evaluation, if available.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0355

Waiver of Extradition (3.109 ICAOS)

(1) An offender applying for interstate supervision shall execute, at the time of application for transfer, a waiver of extradition from any state to which the offender may abscond while under supervision in the receiving state.

(2) States that are party to this compact waive all legal requirements to extradition of offenders who are fugitives from justice.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0365

Offenders Illegally Present in Oregon

Requests for compact services shall be returned to the sending state when sending state's offender is present in Oregon in violation of rules of the Interstate Compact for Adult Offender Supervision.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0375

Notification to Victims Upon Transfer of Offenders (3.108 ICAOS)

Within one business day of the issuance of reporting instructions or acceptance of transfer by the receiving state, the sending state shall initiate notification procedures of the transfer of supervision of the offender in accordance with its own laws to known victims in the sending state, and the receiving state shall initiate notification procedures of the transfer of supervision of the offender in accordance with its own laws to victims in the receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0385

Notification to Victims Upon Violation by Offender or Other Change in Status (3.108 ICAOS)

(1) The receiving state is responsible for reporting information to the sending state when an offender:

(a) Commits a significant violation;

(b) Changes address;

(c) Returns to the sending state where an offender's victim resides;

(d) Departs the receiving state under an approved plan of supervision in a subsequent receiving state; or

(e) Is issued a temporary travel permit where supervision of the offender has been designated a victim-sensitive matter.

(2) Both the sending state and the receiving state shall notify known victims in their respective states of this information in accordance with their own laws or procedures.

(3) The receiving state shall respond to requests for offender information from the sending state no later than the fifth business day following the receipt of the request.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0395

Victims' Right to be Heard and Comment (3.1081 ICAOS)

(1) When an offender submits a request to transfer to a receiving state or a subsequent receiving state or to return to a sending state, the victim notification authority in the sending state shall, at the time of notification to the victim, shall inform victims of the offender of their right to be heard and comment. Victims of the offender have the right to be heard regarding their concerns relating to the transfer request for their safety and family members' safety. Victims have the right to contact the sending state's interstate compact office at any time by telephone, telefax, or conventional or electronic mail regarding their concerns relating to the transfer request for their safety and family members' safety. The victim notification authority in the sending state shall provide victims of the offender with information regarding how to respond and be heard if the victim chooses.

(a) Victims shall have ten business days from receipt of notice required in this provision to respond to the sending state. Receipt of notice shall be presumed to have occurred by the fifth business day following its sending.

(b) The receiving state shall continue to investigate the transfer request while awaiting response from the victim.

(2) Upon receipt of the comments from victims of the offender, the sending state shall consider comments regarding their concerns relating to the transfer request for their safety and family members' safety. Victims'

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comments shall be confidential and shall not be disclosed to the public. The sending state or receiving state may impose special conditions of supervision on the offender, if the safety of the offender's victims or family members of victims is deemed to be at risk by the approval of the offender's request for transfer.

(3) The sending state shall respond to the victim no later than five business days following receipt of victims' comments, indicating how victims' concerns will be addressed when transferring supervision of the offender.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0405

Manner and Degree of Supervision in Receiving State (4.101 ICAOS)

A receiving state shall supervise an offender transferred under the interstate compact in a manner determined by the receiving state and consistent with the supervision of other similar offenders sentenced in the receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0415

Duration of Supervision in the Receiving State (4.102 ICAOS)

A receiving state shall supervise an offender transferred under the interstate compact for a length of time determined by the sending state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0425

Special Conditions (4.103 ICAOS)

(1) At the time of investigation or during the term of supervision, the compact administrator or supervising authority in the receiving state may impose a special condition on an offender transferred under the interstate compact if that special condition would have been imposed on the offender if sentence had been imposed in the receiving state.

(2) A receiving state shall notify a sending state that it intends to impose or has imposed a special condition on the offender, the nature of the special condition, and the purpose.

(3) A sending state shall inform the receiving state of any special conditions to which the offender is subject at the time of request for transfer is made, or when it becomes available.

(4) A receiving state that is unable to enforce a special condition imposed in the sending state shall notify the sending state of its inability at the time of request for transfer of supervision is made.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0435

Offender Registration in Receiving State (4.104 ICAOS)

The receiving state shall require that an offender transferred under the interstate compact comply with any offender registration and DNA testing requirements in accordance with the laws or policies of the receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0445

Arrival and Departure Notifications, Withdrawal of Reporting Instructions (4.105 ICAOS)

(1) Departure Notifications: At the time of an offender's departure from any state pursuant to a transfer of supervision or the granting of a travel permit, the state from which the offender departs shall notify the intended receiving state, and, if applicable, the sending state, by telephone, electronic mail or telefax of the date and time of the offender's intended departure and the date by which the offender has been instructed to arrive.

(2) Arrival Notifications: At the time of an offender's arrival in any state pursuant to a transfer of supervision or the granting of a travel permit, or upon the failure of an offender to arrive as instructed, the intended receiving state shall immediately notify the state from which the offender departed, and, if applicable, the sending state, by telephone, electronic mail or telefax of the offender's arrival or failure to arrive.

(3) Withdrawal of Reporting Instructions:

(a) The receiving state may withdraw its reporting instructions if the offender does not report to the receiving state as directed in the reporting instructions.

(b) The receiving state that withdraws its reporting instructions or subsequently determines that an offender granted a travel permit has absconded, shall immediately notify the sending state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

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Progress Reports (4.106 ICAOS)

(1) A receiving state shall provide to the sending state a progress report annually, or more frequently, upon the request of the sending state, for good cause shown.

(2) A progress report shall include:

- (a) Offender's name;
- (b) Offender's residence address;
- (c) Offender's telephone number and electronic mail address;
- (d) Name and address of offender's employer;
- (e) Supervising officer's summary of offender's conduct, progress and attitude, and compliance with conditions of supervision;
- (f) Programs of treatment attempted and completed by the offender;
- (g) Information about any sanctions that have been imposed on the offender since the previous progress report;
- (h) Supervising officer's recommendation; and
- (i) Any other information requested by the sending state that is available in the receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0465

Fees (4.107 ICAOS)

(1) Application Fee: A sending state may impose a fee for each transfer application prepared for an offender.

(2) Supervision Fee:

(a) A receiving state may impose a reasonable supervision fee on an offender whom the state accepts for supervision, which shall not be greater than the fee charged to the state's own offenders.

(b) A sending state shall not impose a supervision fee on an offender whose supervision has been transferred to a receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0475

Collection of Restitution, Fines and Other Costs (4.108 ICAOS)

(1) A sending state is responsible for collecting all fines, family support, restitution, court costs, or other financial obligations imposed by the sending state on the offender.

(2) Upon notice by the sending state that the offender is not complying with family support and restitution obligations and financial obligations as set forth above, the receiving state shall notify the offender that the offender is in violation of the conditions of supervision and must comply. The receiving state shall inform the offender of the address to which payments are to be sent.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0485

Temporary Travel Permits

(1) This rule regulates the travel of offenders relocating to other states including compacted offenders or those applying for compact services. It does not apply to other offenders under supervision.

(2) An offender may be issued an out of state temporary travel permit for up to 31 days for reasons consistent with the purposes of supervision and public safety. Temporary travel permits to return to the sending state require notice be given the sending state.

(3) Offenders shall not be granted a temporary travel permit to a receiving state during an active transfer investigation without the consent of the receiving state. Temporary travel permits shall not be granted to seek employment and residence in another state for the purpose of compacting to that state.

(4) Exceptions:

(a) "Victim-Sensitive" Cases: The receiving state shall notify the sending state when a temporary travel permit is issued. Travel permits for these offenders may not exceed 31 days. No temporary travel permit shall be granted to a "victim-sensitive" case that is inconsistent with these requirements.

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(b) **Employment/Treatment in Adjoining State:** A temporary travel permit may be issued for up to 120 days and renewed as needed to permit daily travel to and from an adjoining state for purpose of employment or treatment. A copy of this permit shall be forwarded through the interstate compact office to the adjoining state to be visited. This permit is intended to expire upon termination of employment or treatment.

(c) **Fire Fighters:** A temporary travel permit for the purpose of fire fighting may be issued for 60 days and renewed as needed to continue seasonal employment fighting fires. A copy of this permit shall be forwarded, in a timely manner, through the interstate compact office to any state visited.

(d) **Offshore Fisherman:** A temporary travel permit may be granted for up to 60 days and renewed as needed for employment purposes. A copy of this permit shall be forwarded through the interstate compact office to any state visited.

(e) **Residential Treatment:** Offenders may be issued a temporary travel permit to reside in a residential treatment program in another state for up to 60 days. A copy of this permit shall be forwarded through the interstate compact office to the state visited. The offender shall immediately return to Oregon upon completion of the program unless accepted for transfer pursuant to this compact.

(f) **Long Term Treatment Programs:** Offenders participating in programs longer than 60 days must request transfer to the receiving state. An expedited transfer may be requested if the offender needs to proceed to the program immediately.

(5) All temporary travel permits shall include the offender's crime of conviction, a beginning and ending date and require that the offender report to local law enforcement within 24 hours of arrival and comply with any registration requirement of that state.

(6) Caution should be exercised in granting permission to travel for sex or violent offenders. Recipients of temporary travel permits should be in substantial compliance with their conditions of supervision and not be considered a high risk to re-offend.

(7) An offender shall not be granted travel to any state where a known victim resides without prior notice to that state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0495

Violation Reports (4.109 ICAOS)

(1) A receiving state shall notify a sending state of significant violations of conditions of supervision by an offender within 30 calendar days of discovery of the violation.

(2) A violation report shall contain:

(a) Offender's name and location;

(b) Offender's state-issued identifying numbers;

(c) Date of the offense or infraction that forms the basis of the violation;

(d) Description of the offense or infraction;

(e) Status and disposition, if any, of offense or infraction;

(f) Dates and descriptions of any previous violations;

(g) Receiving state's recommendation of actions sending state may take;

(h) Name and title of the officer making the report; and

(i) If the offender has absconded, the offender's last known address and telephone number, name and address of the offender's employer, and the date of the offender's last personal contact with the supervising officer.

(3) The sending state shall respond to a report of a violation made by the receiving state no later than ten business days following receipt by the sending state. Receipt of a violation report shall be presumed to have occurred by the fifth business day following its transmission by the receiving state;

(4) The response by the sending state shall include action to be taken by the sending state and the date by which that action will begin and its estimated completion date.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0505

Transfer to a Subsequent Receiving State (4.110 ICAOS)

(1) At the request of an offender for transfer to a subsequent receiving state, and with the approval of the sending state, the sending state shall prepare and transmit a request for transfer to the subsequent state in the same manner as an initial request for transfer is made.

(2) The receiving state shall assist the sending state in acquiring the offender's signature on the "Offender Application for Interstate Compact Transfer," the "Agreement to Return on Demand of the Sending State" and the "Consent to Random Drug and Alcohol Testing and to Searches Based on Reasonable Suspicion" forms, and any other forms that may be required for submission of an "Application for transfer of supervision" and shall transmit these forms to the sending state.

(3) The receiving state shall submit a statement to the sending state summarizing the offender's progress under supervision.

(4) The receiving state shall issue a travel permit to the offender when the sending state informs the receiving state that the offender's transfer to the subsequent receiving state has been approved.

(5) Notification, of offender's departure, shall be sent by the state the offender is departing to the state offender has been issued a travel permit to proceed to. An arrival notice shall be sent by the new receiving state to the original sending state upon the offender's arrival.

(6) Acceptance of the offender's transfer of supervision by a subsequent state and issuance of reporting instructions to the offender terminate the receiving state's supervisory obligations for the offender.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0515

Return to the Sending State (4.111 ICAOS)

(1) Upon an offender's request to return to the sending state, the receiving state shall request reporting instructions, unless the offender is under active criminal investigation or is charged with a subsequent criminal offense in the receiving state.

(2) The sending state shall grant the request and provide reporting instructions no later than two business days following receipt of the request for reporting instructions from the receiving state.

(3) The receiving state shall send a departure notice to the sending state upon offender's departure.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0525

Closing of Supervision by the Receiving State (4.112 ICAOS)

(1) The receiving state may close its supervision of an offender and cease supervision upon:

(a) The date of discharge indicated for the offender at the time of application for supervision unless informed of an earlier or later date by the sending state;

(b) Notification to the sending state of the absconding of the offender from supervision in the receiving state;

(c) Notification to the sending state of the sentencing of the offender to incarceration for 180 days or longer and receipt from the sending state of a warrant and detainer or other acknowledgement by the sending state of responsibility for the offender within 90 days of the notification.

(A) If the sending state fails to provide the warrant and detainer or other acknowledgement within 90 days of notification, the receiving state may close its supervision of the offender.

(B) After 90 days the sending state shall be responsible for the offender.

(d) Notification of death; or

(e) Return to sending state.

(2) A receiving state shall not terminate its supervision of an offender while the sending state is in the process of retaking the offender.

(3) At the time a receiving state closes supervision, a case closure notice shall be provided to the sending state which shall include last known address and employment.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0535

New Felony Offense (5.102 ICAOS)

Upon a request from the receiving state, a sending state shall retake or order the return of an offender from the receiving state or a subsequent receiving state upon the offender's conviction of a new felony offense and completion of a term of incarceration for that conviction or the placement of the offender on probation for that felony offense.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

ADMINISTRATIVE RULES

291-180-0545

Violations of Conditions of Supervision (5.103 ICAOS)

Upon request by the receiving state and a showing that the offender has committed three or more significant violations arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision, a sending state shall retake or order the return of an offender from the receiving state or a subsequent receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0555

Effect of Special Conditions or Requirements Imposed by the Receiving State (5.112 ICAOS)

(1) For purposes of revocation or other punitive action against an offender, the probation or paroling authority of a sending shall give the same effect to a violation of special conditions or requirement imposed by a receiving state as if those conditions or requirement had been imposed by the sending state.

(2) Failure of an offender to comply with special conditions or additional requirements imposed by a receiving state shall form the basis of punitive action in the sending state notwithstanding the absence of such conditions or requirements in the original plan of supervision issued by the sending state.

(3) For purposes of these rules, the original plan of supervision shall include, but not be limited to, any court orders setting forth the terms and conditions of probation, any orders incorporating a plan of supervision by reference, or any orders or directives of the paroling or probation authority.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0565

Retaking by the Sending State (5.101 ICAOS)

(1) Except when offenders have a new felony conviction or have established a pattern of non-compliance by the commission of three or more significant violations as provided for in previous sections, the sending state, at its sole discretion, may retake an offender, unless the offender has been charged with a subsequent criminal offense in the receiving state.

(2) If the offender has been charged with a subsequent criminal offense in the receiving state, the offender shall not be retaken without the consent of the receiving state, or until criminal charges have been dismissed, or the offender has been released to supervision for the subsequent offense.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0575

Cost of Retaking an Offender (5.104 ICAOS)

A sending state shall be responsible for the cost of retaking the offender.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0585

Time Allowed for Retaking an Offender (5.105 ICAOS)

A sending state shall retake an offender within 30 calendar days after the decision to retake has been made or upon release of the offender from incarceration in the receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0595

Cost of Incarceration in Receiving State (5.106 ICAOS)

The receiving state shall be responsible for the cost of detaining the offender in the receiving state pending the offender's retaking by the sending state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0605

Officers Retaking an Offender (5.107 ICAOS)

(1) Officers authorized under the law of a sending state may enter a state where the offender is found and apprehend and retake the offender, subject to this compact, its rules, and due process requirements.

(2) The sending state shall be required to establish the authority of the officer and the identity of the offender to be retaken.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0615

Opportunity for Hearing in Receiving State (5.108 ICAOS)

The offender shall be afforded the opportunity for a probable cause hearing in the receiving state consistent with due process requirements. No waiver of a probable cause hearing shall be accepted unless accompanied by an admission by the offender to one or more significant violations of the terms or conditions of supervision. Any evidence or record generated during a probable cause hearing shall be forwarded to the sending state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0625

Transport of Offenders (5.109 ICAOS)

States that are party to this compact shall allow officers authorized by the law of the sending or receiving state to transport offenders through the state without interference.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0635

Retaking Offenders From Local, State or Federal Correctional Facilities (5.110 ICAOS)

Officers authorized by the law of a sending state may take custody of an offender from a local, state or federal correctional facility at the expiration of the sentence or the offender's release from that facility provided that:

(1) No detainer has been placed against the offender by the state in which the correctional facility lies; and

(2) No extradition proceedings have been initiated against the offender by a third-party state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0645

Denial of Bail to Certain Offenders (5.111 ICAOS)

An offender against whom retaking procedures have been instituted by a sending or receiving state shall not be admitted to bail in any state where the offender is found.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0655

Dispute Resolution (6.101-6.102 ICAOS)

It is the policy of the Oregon Department of Corrections as administrator of the Oregon Interstate Compact to resolve disputes with other member states regarding interstate compact activities in a manner consistent with the adopted rules of the National Commission of the Interstate Compact for Adult Offender Supervision. The following are the general steps to be taken:

(1) The first effort will be made to resolve any dispute informally with the other state.

(2) If unresolved, Oregon will seek the assistance of the executive director of the National Compact in resolving the dispute. The Executive Director will, using any resource available, within 10 business days issue a written response to the disputing parties.

(3) Any dispute not informally resolved by this process shall be formally resolved by mediation and arbitration set forth in the rules adopted by the Interstate Commission of the Interstate Compact for Adult Offender Supervision.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

291-180-0665

Interpretation of Rules (6.101 ICAOS)

Oregon Interstate Compact may submit an informal written request to the Executive Director of the Interstate Compact for Adult Offender Supervision for assistance in interpreting the rules of that compact. The Executive Director or the Executive Committee will, using any resource available, submit a written response to be circulated to all of the states.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05

Adm. Order No.: DOC 3-2005

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Rules Adopted: 291-127-0285

Rules Amended: 291-127-0200, 291-127-0210, 291-127-0220, 291-127-0230, 291-127-0240, 291-127-0250, 291-127-0260, 291-127-0280, 291-127-0290, 291-127-0300, 291-127-0310, 291-127-0320, 291-127-0330

Rules Repealed: 291-127-0270

Subject: These rules amendments are necessary to revise and update the department's guidelines that govern the visitation programs in its facilities. Major modifications include establishing a review process for reconsideration of visitors who are ineligible to visit, expanding the definition of immediate family member, clarifying the process for facilitating professional and therapeutic/programming visits, updating approved visitors lists, and revising visiting room protocol for inmates and visitors to enhance the visiting experience.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-127-0200

Authority, Purpose and Policy

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to establish department policy and procedures regarding inmate visitation, and the administration of visitation programming in Department of Corrections facilities.

(3) Policy:

(a) Visiting is an integral component of facility management, inmate habilitation and community safety. Visiting can improve public safety and encourage responsible familial relationships by holding inmates accountable and reducing the risk of future criminal behavior.

(b) Within the inherent limitations of resources and the need for facility security, safety, health and good order, it is the policy of the Department of Corrections to permit, promote, facilitate, and encourage approved visitation by inmates with their families, friends, and others in Department of Corrections facilities. When authorized, visitation in a Department of Corrections facility is permitted neither as a matter of right nor as a privilege of the inmate or the inmate's visitor; rather, visitation in Department of Corrections facilities is permitted by the department when it furthers the inmate's correctional planning and the department's correctional goals and mission and is consistent with the safe, secure and orderly management and operation of the facility.

(c) The department may structure visiting in its correctional facilities as an incentive program to encourage good institutional conduct.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05

291-127-0210

Definitions

(1) Accompanied Visit: A type of visitation authorized by the Department of Corrections in its correctional facilities in which an inmate is permitted to visit with a minor child who remains in the company of an approved adult visitor with the written consent of the custodial parent or guardian.

(2) Basic Visiting: A type of visitation authorized by the Department of Corrections in its correctional facilities in which an inmate and an approved visitor are permitted to see and talk with each other on a scheduled basis for a reasonable period of time with no physical contact. Basic visiting may be authorized by the department to take place in person, or through the use of videoconferencing technology.

(3) Co-Defendant: A person who has been convicted of a crime in which the inmate had some involvement in the same criminal incident(s) which gave rise to the conviction, or who is currently the subject of a criminal prosecution for the same criminal incident(s) involving the inmate.

(4) Conspiracy: An agreement between an inmate and one or more persons to engage in, cause, or conceal a rule violation or criminal activity.

(5) 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.

(6) Contractor: Any person working or providing services in a Department of Corrections facility under a contractual arrangement to provide services to the department, or 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.

(7) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(8) Disrespect: Where a visitor directs hostile, sexual, abusive, or threatening language or gestures, verbal or written, towards or about another person.

(9) Disturbance: Conduct or activity which unnecessarily interferes with visitation operations, and/or which advocates, encourages, promotes or otherwise creates or poses a threat to the safety, security, health and good order of the facility, and/or the safety and security of inmates, staff, visitors, contractors or the community. A visitor commits a disturbance if he/she advocates, creates, engages in, maintains or promotes an annoying condition or disorder characterized by unruly, noisy, violent conduct which disrupts the orderly administration of the visiting process.

(10) Employee: Any person employed full-time, part-time or on temporary appointment by the Department of Corrections.

(11) Excessive Contact: Prolonged or frequent contact between a visitor and an inmate which exceeds the brief embrace and kiss upon meeting and leaving, hand-holding, or holding of children specifically allowed. Excessive is not casual contact, but rather a pattern of contact beyond rule limits.

(12) Holiday: A day recognized and announced annually as a holiday. If the actual and generally recognized holiday differs from the day recognized by the Department of Administrative Services, the holiday recognized for purposes of this rule is the date indicated on the calendar.

(13) Immediate Family Member: Spouse, parent, sibling, child, aunt, uncle, grandchildren and grandparents, including foster, in-law, and step-relationships.

(14) Inappropriate Relationship: A personal relationship between an inmate or offender and any employee, contractor, or volunteer of the Department of Corrections that developed during the course of employment/contract work/volunteering or as a result of same.

(15) Inmate: Any person under the supervision of Department of Corrections who is not on parole, post-prison supervision, or probation status.

(16) Intake Status: That period of time following delivery of an inmate to the custody of the Department of Corrections in which the department conducts its intake processing of the inmate including, but not limited to, the conduct of medical and mental health assessments, custody classification, and identification of programming needs and assignments.

(17) Privileged Visiting: A type of visitation authorized by the Department of Corrections in its correctional facilities in which an inmate and an approved visitor are permitted to see and talk with each other on a scheduled basis for a reasonable period of time with limited physical contact, consisting of a brief embrace and kiss upon meeting and leaving, hand holding, and holding of children.

(18) Reasonable Suspicion: An apparent state of objective facts and rational inferences drawn there from which would permit a reasonable and experienced correctional staff person to conclude that an individual or set of circumstances poses a threat to the safety, security, health and good order of the facility, and/or the safety and security of inmates, staff, visitors, contractors or the community, including, but not limited to, committing a crime or rule violation or conspiring or attempting the same.

(19) Search: A close inspection, including touching in an impartial manner, of a person, vehicle, possessions, or other property, or buildings or premises. For purposes of entering a correctional institution, searches often require the removal and separate inspection of shoes, belts, jackets, and other accessories during processing. Types of searches include the following:

(a) Consent: Inspection of a person or their property conducted with prior permission of the person being searched, or of a person who owns or has in his/her possession that property which is searched.

(b) Frisk: To search a person for something by running the hands over the clothed person, through the hair, inspecting pockets and cuffs, and other items in his/her possession.

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(c) Skin: A search procedure wherein the person being searched removes all of his/her clothing and is visually examined and clothing removed is carefully inspected before return and redressing, for the purpose of detecting contraband.

(20) Sexual Activity: Sexual contact including, but not limited to sexual intercourse, kissing, fondling, and/or manipulation of the genitalia, buttocks, and breasts of another person, or of oneself, in a manner which produces or is intended to produce sexual stimulation or gratification.

(21) Sex Crime Involving a Minor Child: Any conviction (including juvenile adjudications) of a sexual crime committed, attempted or conspired in which a minor child was involved, victimized, or the intended victim.

(22) Special Housing Status: Those inmates housed in one of the following areas:

- (a) Disciplinary Segregation;
- (b) Administrative Segregation;
- (c) Special Management Unit (SMU);
- (d) Death row;
- (e) Infirmary;
- (f) Intensive Management Unit (IMU); or
- (g) Community Hospitalization.

(23) Special Visiting: Those visits listed below:

(a) A type of visitation authorized by the Department of Corrections in its correctional facilities in which an inmate is permitted to visit with a person who is not on the inmate's approved visiting list;

(b) An extra visit by an inmate and a person who is on the inmate's approved visiting list that is permitted beyond the limits on the number of visits established by these rules and the facility; and

(c) A visit that is permitted at an hour and/or place at which visits are not normally permitted.

(24) Spouse: A person who is legally married to an inmate.

(25) Termination of Visiting: The end of visiting privileges for the day by order of the visiting area staff or other authorized staff.

(26) Victim: A person who was subjected to direct harm or injury as a result of the criminal conduct of the inmate for which the inmate has been convicted, past or present, as identified in records or in information available to the Department of Corrections.

(27) Video Visiting: A type of visiting authorized by the Department of Corrections in which an inmate and an approved visitor are permitted to see and talk with each other on a scheduled basis through the use of video-conferencing technology. Video visitation may be used for basic visiting or as a supplement to on-site contact visiting.

(28) Volunteer: An approved person(s) who donates time, knowledge, skills and effort to enhance the mission, activities and programs of the department (includes practicum and interns). Volunteers serve at the pleasure of the department and are not considered employees.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05

291-127-0220

Inmate Eligibility

(1) All inmates, except those inmates in intake status or as specifically provided in these rules, are eligible to apply for visits while confined in a Department of Corrections facility.

(2) Inmates Convicted of Sexual Crimes Involving Minor Children:

(a) Inmates who have a current or prior conviction for a sexual crime involving a minor child are ineligible to visit with any minor child, other than their own biological child. Inmates who have a current or prior conviction for a sexual crime involving a minor child belonging to their immediate family, or who have a documented history of sex abuse with a minor child belonging to their immediate family are ineligible to visit with any minor child, including their own biological child.

(A) The inmate shall provide or have provided verification that the child is his/her biological child; e.g., birth certificate.

(B) An adopted child is considered a biological child.

(b) An inmate who is ineligible to visit with a minor child under the provisions of this rule may request reconsideration to apply for such visits by writing to the facility superintendent. The superintendent may authorize such visits if he/she determines these visits will achieve a legitimate correctional objective, in furtherance of the department's mission.

(A) The written request must include an evaluation which assesses the inmate's risk to minor children. The evaluation shall be conducted by a specialized sex offender evaluator approved by the department. This evaluation must include a specific issue polygraph performed by a licensed polygrapher approved by the department.

(B) The department shall develop a list of suitable evaluators and polygraphers, which will be available to inmates. Cost of the evaluation is the responsibility of the inmate.

(C) Superintendent's Review: The superintendent may request assistance from community corrections resources in making the determination to grant or deny the request. Any exception shall apply only to the facility where authorized visiting is approved. The superintendent's decision shall be final and not subject to administrative review.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05

291-127-0230

Eligibility of Prospective Visitors

(1) All persons, except as specifically provided in these rules, are eligible to be considered by the department for approval to visit an inmate confined in a Department of Corrections facility, upon application and request by the inmate.

(2) Certain Criminal Convictions/Pending Charges: A person is ineligible to visit an inmate confined in a Department of Corrections facility if the person has been convicted of, or has criminal charges pending against him/her for, the following crimes/criminal activities:

(a) Introduction and/or supplying, attempting or conspiring to introduce or supply contraband as defined in ORS 162.185;

(b) Possession, control or delivery of an explosive device or substance, including attempt or conspiracy to do the same; or

(c) Assisting an inmate in an escape or unlawful departure from a correctional facility, including an attempt or conspiracy to do the same.

(3) Inmates on Transitional Leave or Assigned to Department of Corrections Facilities: Inmates on transitional leave or who are assigned to another Department of Corrections facility are ineligible to visit an inmate in a Department of Corrections facility.

(4) A person is ineligible to visit an inmate confined in a Department of Corrections facility if the person has been determined by the department to have possessed, introduced and/or supplied a controlled substance or drug-related paraphernalia, tobacco, or money in excess of \$1 to an inmate or other person in a Department of Corrections facility, and the person was permanently removed from the inmate's visiting list.

(5) Crime Victims: A person is ineligible to visit an inmate confined in a Department of Corrections facility if the person is a victim of the inmate's crime(s) of conviction, past or present.

(6) Co-Defendants: A person is ineligible to visit an inmate confined in a Department of Corrections facility if the person and the inmate were or are co-defendants in any criminal prosecution, past or present.

(7) Drug-Related Crimes/Criminal Activity:

(a) A person who within the last five years has been convicted of any drug-related crime is ineligible to visit an inmate in a Department of Corrections facility.

(b) Once the five year restriction has been satisfied, an individual who has been convicted of, or has criminal charges pending for any drug-related crime as stated above will be eligible to apply for basic visiting. After being on basic visiting status for a minimum of one year, the individual may apply for privileged visiting.

(8) Present or Former Inmates of State, County or Federal Corrections Facilities:

(a) A person who is or has been sentenced and incarcerated for a felony crime in a state, county or federal corrections facility at some time in the past five years is ineligible to visit an inmate confined in a Department of Corrections facility.

(b) Once the five-year restriction has been satisfied, an individual who has been sentenced and incarcerated in a state, county or federal correctional facility as stated above will be eligible to apply for basic visiting. After being on basic visiting status for a minimum of one year, the individual may apply for privileged visiting.

(9) Persons on Probation, Parole or Post-Prison Supervision: Other than immediate family members, a person on probation, parole or post-prison supervision is ineligible to visit an inmate in a Department of Corrections facility. Immediate family members who are on probation, parole or post-prison supervision will be eligible to apply for visit with the written consent of the immediate family member's parole/probation officer, or in the case of court-supervised probation, with the written consent of the supervising judge and the approval of the facility superintendent or designee.

(10) Department of Corrections Employees, Volunteers or Contractors:

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(a) Current Department of Corrections employees, volunteers and contractors are ineligible to visit an inmate confined in a Department of Corrections facility unless the inmate is a member of the employee's/volunteer's/contractor's immediate family as defined in these rules.

(b) Former Department of Corrections employees, volunteers or contractors who resigned in lieu of removal from their position as a result of an inappropriate relationship with an inmate, or who were discovered after their resignation, retirement or termination to have been engaged in an inappropriate relationship with an inmate, are ineligible to visit an inmate confined in a Department of Corrections facility.

(11) Any exceptions to sections (4) to (10) must have the recommendation of the facility superintendent and be authorized by the Assistant Director for Operations or designee.

(a) Any person who is ineligible to visit for the reasons specified in sections (4) through (10) of this rule may request reconsideration by writing to the facility superintendent.

(b) The superintendent will review the request and make a recommendation to the Assistant Director for Operations. The Assistant Director for Operations or designee will make the final decision.

(c) If the exception is granted, it must be applied consistently to all department facilities, unless otherwise stated.

(d) The exception will be cited in the DOC Visitor Tracking System by the institution originating the request.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05

291-127-0240

Approval/Denial of Visiting Application; Restrictions

(1) Visiting Application:

(a) Inmates desiring to visit with a family member or other person while confined in a Department of Corrections facility must submit a completed visiting application to their counselor or other facility staff designated to receive and process visiting applications. Inmates must submit a visiting application form (CD 50D) for each prospective visitor regardless of their age. Prospective visitors, who receive a signed application form to complete from an inmate, may elect to submit the completed application directly to the inmate's counselor for privacy purposes.

(b) Inmates who are returned to custody in a Department of Corrections facility following an escape or a period of parole or post-prison supervision in the community shall be required to submit a new visiting application for each prospective visitor.

(2) Criminal Records Check: All prospective visitors age 15 years and older shall be subject to a criminal records check as part of the visitation approval process.

(3) Letter of Custodial Consent: If the prospective visitor is an emancipated minor child, a notarized letter of custodial consent signed by the custodial parent and/or legal guardian must be submitted to the counselor or other facility staff designated to receive and process visiting applications as part of the visitation approval process. A signed letter of custodial consent is not required if the prospective visitor is an emancipated minor. Once received, signed letters of custodial consent shall be maintained in the inmate's central file.

(4) Approval/Denial of Visiting Application:

(a) Except when the Assistant Director for Operations, superintendent or designee's authorization is required under these rules, the inmate's counselor or other designated facility staff will approve or deny the visiting application following receipt of the application and any additional required documentation or requested information (e.g., criminal records check, letter of custodial consent, etc). If the visiting application is approved, the counselor or other designated facility staff will place the approved visitor's name on the inmate's visiting list, and designate the type of visitation that will be authorized (i.e., privileged, basic or video).

(b) Prior to approving or denying the application, the counselor or other designated staff may:

(A) Verify information submitted in the application;

(B) Request additional information from the inmate, the prospective visitor, law enforcement agencies, or other reliable sources; and/or

(C) Interview the inmate or prospective visitor.

(c) Applications to visit with prospective visitors who are eligible to visit an inmate confined in a Department of Corrections facility under these rules will generally be approved unless the department has reasonable suspicion that permitting the visitation would jeopardize the safety, security, health or good order of the facility, and/or the safety and security of other inmates, staff, visitors, contractors or the community. Specific reasons for denial include, but are not limited to, the following:

(A) The inmate or prospective visitor has previously introduced contraband into a jail or other corrections facility, or there is reasonable suspicion that the inmate or prospective visitor will introduce contraband into a Department of Corrections facility through the visiting process.

(B) The inmate or prospective visitor has previously disrupted the visiting process or violated visiting rules and procedures within a jail or other corrections facility by words or acts, or there is reasonable suspicion that the inmate or prospective visitor will disrupt the visiting process or violate visiting rules and procedures within a Department of Corrections facility by words or acts.

(C) The inmate or proposed visitor has intentionally submitted false information to the department as part of the visiting application process.

(D) There is reasonable suspicion that the inmate or prospective visitor is engaged in any form of criminal activity in the community or within a Department of Corrections facility.

(E) The prospective visitor has refused to submit to a search based upon reasonable suspicion during a prior visit to any Department of Corrections facility.

(5) A prospective visitor may not be on more than one inmate's approved visiting list at the facility where the inmate is confined, unless the prospective visitor is an immediate family member.

(6) Children Maximum Number of Approved Visitors:

(a) Inmates may be permitted a maximum of 15 approved visitors on their respective visiting lists.

(b) Under 13 Years of Age: The name of each approved visitor shall appear on the inmate's visiting list; however, persons under 13 years of age shall not be counted toward the maximum number of approved visitors, although their names must still appear on the list.

(c) Children Under 18 Years of Age: Children under 18 years of age may visit on any of the regular visiting days when accompanied by an adult visitor on the inmate's approved visiting list. Both visitors must be visiting the same inmate at the same time. Exceptions may be specifically authorized by the facility superintendent or designee.

(7) Denial for Submitting False Information: An inmate or prospective visitor who has intentionally submitted false information to the department as part of the visiting application process will be denied visitation for at least one year, after which time the inmate may submit a new visiting application for approval in accordance with these rules.

(8) Restriction to Basic Visiting for Drug-Related Activity: An inmate who has been found in violation of the department's rules of prohibited inmate conduct for drug-related activity, including attempt or conspiracy, may have his/her visits restricted to basic visiting as included in the sanction on the final order in accordance with the rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(9) Notification to Inmate of Decision on Visiting Application: The counselor or other facility staff designated to receive and process the visiting application shall notify the inmate in writing within 30 days of receipt of the application whether the application has been approved, denied or deferred for further processing.

(a) If the application is approved, the notice will include a designation of the type of visiting that has been authorized (i.e., privileged or basic).

(b) If visiting is denied, the notice shall include the specific grounds for denial upon which the decision is based, and inform the inmate that he/she has a right to obtain a review of the decision by submitting a written request to the superintendent/designee within 30 days of receipt of the notice of denial.

(A) The inmate or proposed visitor may submit written comments to the superintendent or designee for consideration.

(B) Within 30 days of receipt of the request for review, the superintendent will issue a final decision.

(10) Notification to Prospective Visitor of Decision on Visiting Application/Inquiries:

(a) Inmates are responsible for informing their prospective visitor(s) whether the visiting application has been approved or denied, and for providing prospective visitors with information on visiting rules and procedures. Copies of the Department of Corrections rule on Visiting (Inmate) will be available for review by prospective visitors at each functional unit's visiting desk/reception area.

(b) Inquiries by prospective visitors regarding department decisions to approve or deny an inmate's visiting application must be in writing and directed to the facility superintendent or designee. Department of Corrections staff will not respond to telephone inquiries by prospective visitors regarding department decisions to approve or deny an inmate's visiting application.

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(11) A visitor shall be removed from an inmate's approved visiting list upon written request by either the inmate or the approved visitor. If a visitor is removed from an inmate's approved visiting list at the request of the visitor or inmate, the visitor may not appeal this decision and, the visitor shall not be eligible to again be placed on the inmate's visiting list, or on any other inmate's approved visiting list, for a minimum of 90 days.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05

291-127-0250

Limitations on Number of Visits/Number of Visitors Allowed at One Time for Inmates Assigned to General Population

(1) Limitations on Number of Visits Per Calendar Month: The number of visits approved in any calendar month for inmates assigned to general population in a Department of Corrections facility shall be limited in accordance with the following point value system:

(a) Each inmate who is permitted visiting (privileged, basic or video) shall be allocated 24 visiting points per calendar month.

(b) Visiting points shall not be deducted for a child one year of age and under, as long as the child is held during the visiting session.

(c) On weekdays, one point shall be deducted for each visitor per visiting session.

(d) On weekends and holidays, two points shall be deducted for each visitor per visiting session, except in those Department of Corrections facilities with weekend visiting only, in which case one point shall be deducted for each visitor per visiting session.

(e) Based on space availability, the superintendent/designee may permit visitation periods when points are not deducted for visits with minor children.

(2) Limitation on Number of Visits on Weekends and Holidays: Inmates assigned to general population in a Department of Corrections facility may be permitted only one visiting session per visitor per day on weekends and holidays. Department of Corrections facilities shall take into consideration hours the visitors have traveled and any other extraneous situations that may warrant permitting two visiting sessions per day on weekends and holidays at the discretion of the facility superintendent or designee.

(3) Limitation on Number of Visitors Per Visit: Due to physical plant design, facilities may limit the number of visitors to no more than three or four persons at one time at the discretion of the facility superintendent or designee. Children under the age of three shall not be counted as part of the maximum number of visitors. Those with minor children exceeding these limitations may appeal to the superintendent or designee for approval in advance of the visiting.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05

291-127-0260

Time, Length, and Place of Visits

(1) The time, length, and place of visits shall be posted at the visiting desk and visiting room of each Department of Corrections facility.

(2) Termination of Visits: Visits may be terminated by the facility superintendent or designated staff at their discretion at any time due to space limitations or as deemed necessary to maintain the safety, security, health and good order of the facility, and/or the safety and security of other inmates, staff, visitors, contractors or the community.

(3) Visitors who engage in a disturbance or other inappropriate conduct as defined in these rules, or who loiter in or about a Department of Corrections facility, shall be subject to removal from the facility by department staff. The officer-in-charge of the facility may notify law enforcement officials for assistance if the visitor refuses to leave the facility when requested by department staff.

(4) Except for minimum-security facilities and the Oregon State Penitentiary, privileged visiting hours occur five days per week (Wednesday through Sunday), including state holidays. Due to physical plant design, work environment and/or staff level, facilities may limit or expand number of days, length, and time of visits at the discretion of the superintendent. The Oregon State Penitentiary will provide visits seven days per week.

(5) Inmates Assigned to General Population:

(a) Visitation for inmates assigned to general population shall take place during regular visiting hours.

(b) Except for minimum-security facilities, visitors will be accommodated on a first come, first serve basis. Facilities may schedule appointments for visiting.

(c) Basic Visiting: An inmate assigned to general population in a Department of Corrections facility whose visits are restricted to basic visiting shall be permitted visitation as follows:

(A) Immediate Family: Four visits per month, two of which must occur on weekdays.

(B) All other approved visitors: Two visits per month.

(C) Only two visitors shall be allowed. A third person shall be permitted if he/she is under three years of age and is held on the lap. Exceptions may be specifically authorized by the superintendent or designee.

(D) Visits shall be limited to no more than one hour in length.

(6) Inmates Assigned to Special Housing:

(a) Inmates assigned to special housing may be permitted basic visiting with immediate family members only in accordance with the criteria set forth in OAR 291-127-0250, except as otherwise specified in these rules.

(b) Visitation by inmates assigned to special housing shall be limited to one visit per week, except as otherwise specified in these rules.

(c) Duration of visits shall be established by the facility superintendent or designee, and shall be limited to no more than one hour in length, depending upon space availability, except as otherwise specified in this rule.

(d) Death Row: Inmates assigned to Death Row who are approved for visiting shall be permitted two visits per week with approved visitors on their visiting list. The maximum length of visits is limited to two hours, depending upon space availability. Visitors must call in advance to schedule a visiting appointment.

(e) Special Management Unit (SMU): Inmates assigned to a Special Management Unit at a Department of Corrections facility may be permitted visits with approved visitors on their visiting list in the unit or the main visiting room, subject to recommendation of a psychiatrist and with the approval of the facility superintendent/designee. The facility superintendent or designee shall direct the type of visiting permitted (privileged or basic), upon recommendation of the psychiatrist. No minor children will be permitted to visit with the inmate if the visit occurs in the unit. Visitors must call in advance to schedule a visiting appointment.

(f) Intensive Management Unit (IMU): Inmates assigned to an Intensive Management Unit (IMU) or IMU cell may be permitted visits based on the inmate's program level and in accordance with the Department of Corrections rule on **Intensive Management Unit** (OAR 291-155). Visits will be conducted in a designated basic visiting area for IMU status inmates. Visits will occur only with immediate family members. Visitors must call in advance to schedule a visiting appointment.

(g) Infirmary: Inmates assigned to the Infirmary at a Department of Corrections facility may be permitted visits as follows:

(A) Inmates who are permanently assigned to the Infirmary at a Department of Corrections facility may be permitted privileged visiting in the main visiting room/area with approved visitors on their visiting list, upon recommendation of Health Services staff. Visitation by inmates approved for privileged visiting in the main visiting room/area shall be subject to the 24 visiting point system set forth in OAR 291-127-0250.

(B) Inmates who are patients in the Infirmary, but are not permanently assigned to the Infirmary, and who are approved for privileged visiting may be permitted visits with immediate adult family members in the Infirmary, except as otherwise recommended by Health Services staff and authorized by the facility superintendent or designee.

(C) Inmates participating in a Department of Corrections Hospice program may be permitted extended visitation on a case-by-case basis, upon recommendation of Health Services staff and as authorized by facility superintendent or designee. Visitation in the Hospice program is not a part of the regular visitation program.

(h) Community Hospitalization: Inmates assigned to community hospitalization and under Department of Corrections supervision may be permitted visits as follows:

(A) Inmates assigned to general population and the infirmary in a Department of Corrections facility prior to their current hospital admission may be permitted visiting during the course of their hospital stay, upon consent of the attending/treating physician and/or hospital administration. Visits shall be during normal hospital visiting hours. Duration of visits shall be determined by the facility superintendent/designee.

(B) Inmates assigned to the Disciplinary Segregation Unit, Administrative Segregation Unit, Special Management Unit, Intensive Management Unit, and Death Row prior to their current hospital admission will only be permitted visits on a case-by-case basis, upon recommendation of Health Services staff, and as authorized by the facility superintendent or designee.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

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Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05

291-127-0280

Special Visits

(1) Inmates confined in a Department of Corrections facility may be permitted special visits at the discretion of the facility superintendent or designee in accordance with these rules.

(2) General Guidelines:

(a) Inmate requests for special visits shall be directed in writing to the facility superintendent or designated staff at least 30 days prior to the date of a requested special visit. The 30-day requirement may be waived if an emergency or unusual circumstances exist.

(b) Type of Visit: Special visits shall be restricted to basic visiting if a criminal background check cannot be made.

(3) Business, Professional and Therapeutic/Programming Visits:

(a) Visitation for nonsocial purposes by attorneys, representatives of criminal justice agencies, state and/or local agencies, other public or government agencies, or for therapeutic/programming purposes may be approved as business, professional or therapeutic/programming visits. Professional and therapeutic/programming visits shall be approved in advance by the facility superintendent or designee. Such visits should be made by appointment during regular visiting hours or hours as designated by the facility. Persons approved for these types of visits with an inmate must present credentials/identification at the facility visiting desk/reception area sufficient to identify themselves. These types of visits are not subject to a point deduction.

(b) Attorneys and representatives from other criminal justice, state or local agencies may be permitted to bring necessary documents or paperwork into the visiting room/area for exchange with the inmate with prior approval of visiting staff. Computers, tape recorders, and other electronic devices may be permitted upon the approval of the facility superintendent or designee. All articles shall be searched for contraband.

(c) These types of visits shall be permitted with only one inmate at a time, except as otherwise authorized in advance by the facility superintendent or designee.

(4) Non-cash Incentives Program Visits:

(a) Inmates may be afforded extra visitation opportunities as part of the non-cash incentives program outlined in the department's rule on Performance Recognition and Award System (Inmate) (OAR 291-077). Such opportunities will depend upon each institution's ability to accommodate enhanced visitation.

(b) Each institution's incentive visitation opportunities will be listed in their institution specific matrix of services and privileges.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05

291-127-0285

Keeping an Inmate's List of Approved Visitors Current

(1) The counselor will review the inmate's approved list of visitors with the inmate during the six-month program review.

(2) If a visitor has not visited the inmate within the previous two years, the visitor will be automatically removed from the inmate's visiting list and the DOC Visitor Tracking System unless the inmate notifies the counselor otherwise.

(3) A LEDS check will be conducted every two years on all visitors.

(4) Visitors are responsible for notifying the department in writing of a change of address, or a name change. If it is a name change, the visitor must provide verification of the name change; e.g., marriage certificate.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05

291-127-0290

Visiting Room Protocol

Visiting is an important component within the correctional system. In order to enhance the visiting experience, the department has developed protocol for visitors and inmates. Visitors are encouraged to view the agency website or contact the facility for visiting hours, number of visitors, rest-room use, parking, etc.

(1) Visiting staff will make every effort to ensure that visitors have an opportunity to visit on the day they arrive.

(2) Visiting Security Screening: Visitors must be processed through a security checkpoint to access the visiting area within all ODOC facilities. Security staff will screen all visitors and search any authorized hand-carried items in accordance with the department's rules and facility procedures.

(a) Processing may require the removal of shoes, jackets, sweaters, suspenders, belts or other accessories for closer inspection and/or separate processing.

(b) Areas of the body that have body piercings and/or undergarments with an underwire often alarm metal detectors and may delay or even prevent visiting. Visitors may be asked to remove body piercings and/or jewelry to expedite the screening process.

(3) For security purposes, initial screening of visitors will be done by metal detector. For most visitors, successfully completing the scan by metal detector and the related inspection of clothing and authorized personal items will preclude additional screening.

(a) At institutions equipped with a functional walk-through metal detector, all visitors must successfully pass through the detector unless a visitor has a documented medical condition or disability that would preclude the visitor from passing through the detector.

(b) At institutions or facilities without a functioning walk-through metal detector, a handwand type of metal detector may be used.

(4) Additional Screening:

(a) Additional Screening will occur when an individual sets off the alarm of the metal detector or an individual has provided documentation to substantiate a condition that precludes successful screening by metal detector. This additional screening may include either a hand-wand inspection in conjunction with a frisk search of the visitor's body, including the torso; a frisk search alone; or a skin search.

(b) At this time, visitors should let staff know of any personal needs or concerns a visitor may have due to religious or cultural considerations, disability, or other medical concern.

(c) Additional searches will be conducted by staff of the same gender as the visitor.

(5) Hand-Wand Inspection: A hand-wand inspection helps staff to identify what may have set off the alarm on the walk-through metal detector or to confirm an alarm present during the initial screening. During the wand procedure the visitor will be asked to stand with feet and legs apart and arms out to the side while the staff member passes the wand in close proximity to all areas of the visitor's body.

(6) Frisk Search: A frisk search complements the hand-wand inspection but may be performed as a stand-alone procedure, when appropriate, or to resolve alarms set off during an inspection by metal detector. In order to ensure security, this inspection may include touching sensitive areas of the body.

(7) Skin Search: A skin search is a security procedure that involves visual inspection of a person's body with all of their clothing removed and a thorough inspection of the person's clothing for the purpose of detecting contraband. No visitor will be asked to submit to a skin search except as provided in the department's rule on Searches (Institutions) (OAR 291-041).

(8) Persons with Disabilities, Medical Conditions, or Medical Devices (or both):

(a) Medical Condition or Disability: Visitors with documentation regarding a medical condition or disability must present this information to staff to help inform staff of the visitor's situation. This documentation will not exempt the visitor from the security screening process. Visitors with proper documentation of a medical condition or disability that would preclude their passing through a walk-through metal detector or handwanding or both will be offered a frisk search as an alternative.

(b) Medical Devices:

(A) Visitors with a medical device (on the interior or exterior of their body) should check with their doctor prior to arriving at the institution to determine if it is safe to go through the metal detector or be handwanded. Visitors that have been advised by their doctor that they should not go through the metal detector or be handwanded must provide staff with documentation of the same. A visitor with the proper documentation will be offered a frisk search as an alternative.

(B) Pacemaker, Defibrillator, Other Implanted Medical Devices, Metal Implants, and Wheelchairs:

(i) If a visitor has an implanted medical device that the visitor would like to remain private and confidential, the visitor should ask staff to please be discrete when assisting him or her through the security screening process.

(ii) Visitors with a pacemaker should carry a Pacemaker Identification Card (ID) when attempting to visit. Visitors showing staff a valid pacemaker ID will be offered a frisk search as an alternative to passing through the walk-through metal detector or being handwanded.

(iii) To expedite the processing of visitors, it is recommended (but not required) that the visitor advise staff that he or she has an implanted pace-

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maker, other implanted medical device, or metal implant and where that implant is located.

(iv) Staff will offer the visitor a frisk search as an alternative once it becomes known that the visitor has a metal implant or implanted medical device.

(v) If the visitor's doctor has indicated that the visitor should not go through the metal detector or be handwanded because it could affect the functionality of the visitor's device, the visitor must inform staff and provide proper documentation of the same. A visitor with the proper documentation will be offered a frisk search as an alternative.

(vi) If a visitor has an implanted bone growth stimulator or other device that operates under a specific magnetic calibration, which cannot be x-rayed because the calibration of these units cannot be disrupted, staff will offer a frisk search in combination with a physical inspection of the device as an alternative to being x-rayed.

(vii) Staff will need to resolve all alarms associated with metal implants. Most alarms will be able to be resolved during a frisk search and should not typically require the lifting and/or removal of clothing.

(viii) Visitors who are confined to wheelchairs will be required to present a medical card or documentation to support their need to be in the wheelchair. A modified frisk search will be used for visitors confined to wheelchairs as the reliability of handheld metal detectors is limited by the structure of the chair itself. Visitors in wheelchairs will limit their accessories and personal possessions to only those items medically necessary during the visiting session.

(c) If a visitor chooses not to submit to a frisk search, the visit may not be allowed to occur.

(d) Skin searches will only be conducted in accordance with the department's rule on Searches (Institutions) (OAR 291-041).

(9) Should a visitor withdraw consent at any time once a search, of any kind, has been initiated, the searching officer will discontinue the search immediately. The visitor will not be allowed to visit.

(10) Within the limits of available resources, staff will be discrete when conducting all searches and inspections of visitors.

(11) Visiting staff will assign visitors locations that are appropriate for the size and make-up of the group, in conjunction with space availability.

(12) Physical Contact: Visitors who are approved for privileged visiting may briefly embrace and kiss the inmate at the beginning and end of the visits. Hand-holding and holding of small children under seven years of age is permitted during the visit.

(13) Appropriate Clothing/Dress: In order to maintain a positive environment for all inmates and visitors, a reasonable clothing standard must be established. Visitors are encouraged to wear clothing that is conservative in nature in order to maintain a respectful visiting environment. Some types of clothing may be prohibited to maintain the security of the facility.

(a) Visitors are not allowed to wear blue denim or clothing (blue t-shirts or blue shirts) that is similar to inmate attire. This restriction is necessary to ensure the safety of all individuals if an emergency arises. Children under three feet tall will be permitted to wear blue denim. Visitors should check with the specific facility they are visiting to inquire about clothing that is prohibited because it is similar to inmate attire.

(b) Clothing that is unduly suggestive or form fitting is prohibited as it may draw undue attention.

(c) Dresses, skirts, jumpers, culottes, and shorts shall not be worn more than two inches above the middle of the kneecap. Slit dresses/skirts shall be permitted only if the slit is not more than two inches above the middle of the kneecap. Wrap-around skirts are not permitted.

(d) Clothing that exposes an undue amount of flesh (e.g., exposing chest, back, thighs, or midsection) is prohibited. Examples of clothing that will be prohibited include: halter tops/dress, tube tops, see-through clothing, sheer fabrics, mini-skirts, shirts with low cut neck lines, wrap around skirts, and crop tops.

(e) Visitors are required to wear undergarments.

(f) Umbrellas, hats, outer garments such as raincoats, ski jackets and other garments that protect against rain and other inclement weather are normally prohibited within the main visiting room. Some visiting rooms require outside travel once checked in. In these cases, the institution will provide a designated area for the garment.

(g) Light-weight sweaters, jackets, and/or sport/suit coats are permitted, but must be worn by the visitor during the entire visiting session. Hooded sweatshirts and lined jackets/coats are permitted.

(h) Accommodations will be made on a case-by-case basis for religious head gear consistent with security practices. Where possible, arrangements should be made prior to visit.

(i) Clothing, hairstyles, insignias or other paraphernalia associated with security threat groups or that create undue attention or conflict are prohibited; i.e., camouflage clothing, slogans, suggestive, or controversial statements.

(j) Footwear must be worn.

(14) Restriction on Exchange of Objects/Articles with Inmates:

(a) Other than items from the vending machines and five non-Poloroid photographs or five sheets of photographs, visitors shall not exchange any object or article with an inmate. Photographs observed during the visit may not be given to the inmate.

(b) Paper items produced by children during the visiting session with materials provided may be taken out by the child or displayed in the visiting room.

(c) All documents/items shall be searched prior to entering or leaving the visiting room/area.

(15) Visitors shall appropriately supervise children at all times while in the visitation/play area. Visitors must ensure that children do not become disruptive to the point that they interfere with other visits, or jeopardize the security of the visiting environment. If this occurs, a visit may be ended prematurely to remove the child.

(16) Visitors shall not engage in a disturbance, as defined in this rule.

(17) Explosive devices, firearms, ammunition, alcoholic beverages, narcotics, dangerous drugs, or objects or material of any kind which might be used to compromise the safety and security of the facility are not permitted on facility grounds. Tobacco products are not permitted in the visiting area, and depending on the facility, may not be permitted on facility grounds.

(18) Any visitor who exhibits indication of the use of alcohol, narcotics, or other intoxicants shall not be permitted to visit.

(19) Items Purchased from Facility Vending Machines:

(a) All items purchased from the vending machines must be consumed or disposed of in the visiting facility, unless authorized by the superintendent/designee.

(b) Inmates shall be prohibited from handling money and/or tokens, and from approaching, or operating the vending machines.

(20) No cash or negotiable instruments other than up to \$15 in change, tokens or other authorized cash substitute devices if applicable, shall be allowed in the visiting room/area. Tokens carried into the visiting area must be clearly inspected and approved by visiting room staff.

(21) Loitering on facility grounds is not permitted. Visitors are expected to arrive at a reasonable time prior to the session and leave immediately afterward. Attempts to communicate with inmates from the grounds before or after the visiting session may cause review of the visitor's visiting status.

(22) Parking Guidelines:

(a) Visitors shall park and lock/secure their automobiles in the designated visitor parking lot.

(b) Minor children or animals shall not be left unattended in cars or on institution property.

(c) Parking for visitors with disabilities will be available in designated areas.

(23) Entry to Department of Corrections Facility/Facility Visiting Area:

(a) Upon arrival at the visiting desk/reception area, the visitor shall sign a registration form and present proper identification (ID). One of the following current photo ID's will be required as identification for visitors age 16 and over to enter a Department of Corrections facility:

(A) Drivers license or state identification;

(B) Passport;

(C) State identification card (state employee or Motor Vehicle Division);

(D) Military identification;

(E) Student identification card; or

(F) Other official governmental identification.

(b) Privileged visiting shall not be permitted without the required current photo ID. However, basic visiting may be approved with at least two of the following pieces of identification:

(A) Social Security Card;

(B) Birth certificate or registration;

(C) Current identification card from service organizations (other than military) with picture and signature; or

(D) Current bankcards and signature.

(c) Children under 16 years of age may also use the following appropriate ID:

(A) Birth certificate or registration;

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- (B) Social security card;
- (C) Oregon Health Plan medical card;
- (D) Student body card; or
- (E) State identification card.
- (d) Inmates shall wear institution issued clothing, undergarments, and footwear into the visiting area.
- (e) Lockers may be provided for visitor use to store purses, carrying cases, etc., until the visit is over.
- (f) Baby-care items shall be permitted as follows per child: two diapers, one clear bottle (plastic), one single layer blanket, one pacifier, and diaper wipes (in clear plastic bag). All items shall be subject to search.
- (g) Restrooms:
 - (A) Restrooms are available for visitor use. For the safety of the child, only an outside escort may accompany a child to the restroom.
 - (B) Depending on the physical plant design of the facility, a restroom(s) separate from that used by visitors may be available for inmate use. If the facility does not have a restroom available for inmate use, the visit shall be terminated if the inmate must leave to use a restroom. Inmates with a documented medical condition as verified by Health Services staff shall be permitted restroom privileges in those facilities where inmate restrooms are not available.
 - (h) Once a visitor or an inmate leaves the visiting area other than to access the restroom, the visit shall be terminated.
 - (i) Once visitors and inmates have been assigned seating in the visiting room/area, changing location requires approval of the visiting room supervisor.
 - (j) Neither a visitor nor an inmate shall be permitted to visit with a person who is not specifically authorized for the current visit.
 - (k) Visitors shall not be permitted to visit twice in one visiting session.
Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05

291-127-0300

Visitors in Violation of Visiting Rules

Visitors found in violation of one or more of these rules are subject to sanctions as directed by the facility superintendent or designee as set forth in these rules. Consequences for visitors found in violation of these rules are listed in Exhibit A.

[ED. NOTE: Exhibits 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 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05

291-127-0310

Termination/Disallowance of Visits

(1) The facility superintendent or designee may disallow or terminate a visit at any time due to space limitations or as deemed necessary to maintain the safety, security, health and good order of the facility, and/or the safety and security of other inmates, staff, visitors, contractors or the community.

(a) Factors to be considered before a visit is terminated due to space limitations will be the distance visitors travel, frequency of visits, and time of arrival.

(b) Visiting room staff will maintain a log of visits terminated due to space limitations to avoid having an inmate's visits terminated consecutively.

(2) Violation of visiting room protocol by a visitor, or violation of rules of prohibited conduct by an inmate shall result, at a minimum, in disallowance or termination of the visit.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05

291-127-0320

Suspension/Restriction of Visits/Removal From Inmate Visiting List

(1) The superintendent or designee may suspend the inmate's visits with the visitor, or restrict visitation to basic visiting, or remove a visitor from an inmate's approved visiting list if the superintendent or designee determines that:

(a) The visitor does not qualify for visits in accordance with these rules; or

(b) There exists reasonable suspicion that continued visitation between the visitor and the inmate poses a threat to the safety, security, health and good order of the facility, and/or the safety and security of other inmates, staff, visitors, contractors or the community; or

(c) There is a court order or Board of Parole and Post-Prison Supervision action form which prohibits contact with the visitor.

(2) Notification: A written report (CD 704D) documenting the suspension shall be prepared and sent to the inmate and to the inmate's visitor within seven days of the action. The report shall contain a short and concise statement of the reason(s) for the suspension and a recommendation for the action to be taken. The recommended action may be assignment to basic visiting, restriction of visiting for a limited duration, or permanent removal.

(a) The visitor may apply for a review of the recommended action by submitting a written request to the superintendent/designee within 30 days of the date of the notification of suspension.

(b) Within 45 days of the receipt of the request, the superintendent will issue a final decision. The visitor may request an administrative review of the superintendent's decision as specified in OAR 291-127-0330.

(c) If the visitor does not request a review, the superintendent/designee will issue a final decision within 30 days of the date of the notification of suspension.

(3) The superintendent or designee may temporarily suspend an inmate's visits for 14 days in the event of an on-going investigation. The superintendent or designee shall provide written notification of the suspension to the inmate and the inmate's visitor(s). If at the conclusion of the investigation or 14 days whichever occurs first, the superintendent or designee determines the visitor's status shall be suspended, the notification process specified in section (2) above will begin.

(4) Reconsideration: Visitors who have been permanently removed from any inmate's approved visiting list, or whose visitation with any inmate has been permanently restricted to basic visiting, may request reconsideration five years after the date of the action. Requests for reconsideration must be in writing and submitted to the Assistant Director of Operations or designee.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 179.040, 183.315, 423.020, 423.030, 423.075 & 423.078
Stats. Implemented: ORS 179.040, 183.315, 423.020, 423.030, 423.075 & 423.078
Hist.: DOC 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05

291-127-0330

Administrative Review

(1) An approved visitor who has been removed from an inmate's approved visiting list, or whose visitation with the inmate has been restricted to basic visiting, may obtain an administrative review of the action by submitting a written request for administrative review to the Assistant Director for Operations or designee at the department's Central Administrative offices. The Assistant Director or designee must receive the administrative review request within 30 days of the issuance of the superintendent's final decision, as specified in OAR 291-127-0320(2). The administrative review request must be in writing and should specify the reason(s) why the visitation action should not be sustained.

(2) Upon receipt of a timely written request for administrative review, the Assistant Director or designee will review the visitation action, and affirm, reverse or otherwise modify the action as circumstances warrant. The decision of the Assistant Director or designee shall be final. A copy of the decision shall be provided to the person requesting the administrative review, the affected inmate, and the superintendent.

(3) Administrative reviews will not be provided to visitors for inmate misconduct resulting in disciplinary sanctions imposed upon inmates in accordance with the Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05

Department of Fish and Wildlife Chapter 635

Adm. Order No.: DFW 7-2005(Temp)

Filed with Sec. of State: 2-22-2005

Certified to be Effective: 2-22-05 thru 4-1-05

Notice Publication Date:

Rules Amended: 635-042-0135

Rules Suspended: 635-042-0135(T)

Subject: Amend rule to extend the winter season for commercial fishing for sturgeon in the Columbia River below Bonneville Dam. Revisions consistent with action taken February 18, 2005 by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

ADMINISTRATIVE RULES

635-042-0135

Sturgeon Season

(1) Sturgeon may be taken for commercial purposes from the Columbia River below Bonneville Dam, Zones 1-5, during commercial salmon fishing seasons with the same fishing gear authorized for the taking of salmon.

(2) Sturgeon and salmon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9 3/4 inches. Adipose fin-clipped salmon and sturgeon only may be sold from this fishery. The open fishing periods are as follows:

- (a) 6:00 am, January 18, 2005 to 6:00 am, January 19, 2005;
- (b) 6:00 am, January 25, 2005 to 6:00 am, January 26, 2005;
- (c) 6:00 am, February 1, 2005 to 6:00 am, February 2, 2005;
- (d) 6:00 am, February 8, 2005 to 6:00 am, February 9, 2005;
- (e) 6:00 am, February 15, 2005 to 6:00 am, February 16, 2005;
- (f) 6:00 am, February 22, 2005 to 6:00 am, February 23, 2005;
- (g) 6:00 am, February 24, 2005 to 6:00 am, February 25, 2005.

(3) Sturgeon and salmon must be delivered to wholesale fish dealers, canners, or fish buyers undressed (in the round).

(4) It is *unlawful* to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any green sturgeon smaller than 48 inches or larger than 66 inches in overall length or any white sturgeon smaller than 48 inches or larger than 60 inches in overall length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

(4) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection 2(a), (b), (c), (d), (e), (f) and (g) of this rule.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 20-1982(Temp), f. & ef. 3-25-82; FWC 3-1983, f. & ef. 1-21-83; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. & 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef. 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 8-2003(Temp), f. 1-27-03, cert. ef. 1-28-03 thru 4-1-03; DFW 10-2003(Temp), f. & cert. ef. 2-3-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 7-2004(Temp), f. & cert. ef. 2-2-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 7-2005(Temp), f. & cert. ef. 2-22-05 thru 4-1-05

Adm. Order No.: DFW 8-2005(Temp)

Filed with Sec. of State: 2-24-2005

Certified to be Effective: 2-24-05 thru 4-1-05

Notice Publication Date:

Rules Amended: 635-042-0130

Rules Suspended: 635-042-0130(T)

Subject: Amend rule to modify the ongoing commercial smelt fishery in the mainstem Columbia River. Revision is consistent with action taken February 23, 2005 by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0130

Smelt Season

(1) Smelt may be taken for commercial purposes from the Columbia River, Zones 1-5, from 3 a.m. to 9 p.m. on the following dates: January 3, 2005; January 6, 2005; January 10, 2005; January 13, 2005; January 17, 2005; January 20, 2005; January 24, 2005; January 27, 2005; January 31, 2005; February 3, 2005; February 7, 2005; February 10, 2005; February 14, 2005; February 17, 2005; February 21, 2005; February 24, 2005; March 3, 2005; March 10, 2005; March 17, 2005; March 24, 2005; and March 31, 2005.

(2) It is *unlawful* to use other than the following gear for the taking of smelt in the Columbia River:

(a) Gill nets of a mesh size not more than two inches. Nets may consist of, but are not limited to, monofilament webbing;

(b) Dip nets having a bag frame no greater than 36 inches in diameter;

(c) Trawl nets with:

(A) Head rope not to exceed 25 feet in length;

(B) Foot rope or groundline not to exceed 25 feet in length;

(C) Door size not to exceed three feet by four feet;

(D) Mesh size not to exceed two inches;

(E) Bag length from the center of the head rope to the terminal end of the bunt not to exceed 35 feet;

(F) Breast rope not to exceed five feet;

(G) Bridle rope from rear of doors to foot rope and head rope not to exceed eight feet.

(3) No more than one trawl net at a time may be fished from any fishing vessel to take smelt.

(4) In the Columbia River upstream from Zone 1, it is *unlawful* to take smelt from a trawl vessel which exceeds 32 feet in overall length.

(5) For the purposes of this rule, Zone 1 is the area downstream of a straight line from a beacon light at Grays Point on the Washington bank to the flashing 4-second red buoy "44" off the easterly tip of Tongue Point on the Oregon Bank.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 8-2000(Temp), f. 2-18-00, cert. ef. 2-20-00 thru 2-29-00; Administrative correction 3-17-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 10-2001(Temp), f. & cert. ef. 3-6-01 thru 3-31-01; Administrative correction 6-21-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; Administrative correction 8-19-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 8-2005(Temp), f. & cert. ef. 2-24-05 thru 4-1-05

Adm. Order No.: DFW 9-2005(Temp)

Filed with Sec. of State: 3-1-2005

Certified to be Effective: 3-1-05 thru 7-31-05

Notice Publication Date:

Rules Amended: 635-042-0022

Subject: This rule will open and establish the spring chinook gill net commercial fishery in the Columbia River mainstem. Revision is consistent with action taken February 28, 2005 by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0022

Spring Chinook Gill Net and Tangle Net Fisheries

(1) Adipose fin-clipped chinook salmon, sturgeon and shad may be taken by gill net or tangle net for commercial purposes from the mouth of the Columbia River upstream to Kelley Point (Zones 1-3 and part of Zone 4).

(a) Individual fishing periods will not exceed sixteen hours in length during small mesh fisheries and twenty-four hours in length during large mesh fisheries. Fishing periods may occur on Tuesdays and Thursdays, depending upon results from test fisheries or full fleet fisheries conducted prior to each specified weekday.

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(b) White sturgeon possession and sales restrictions by each participating vessel will be determined inseason based on gear type and number of fish remaining on the fish guideline.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring chinook gill net fishery:

(a) It is *unlawful* to use a gill net having a mesh size less than 9 inches and more than 9-3/4 inches. Use of monofilament nets is allowed.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(c)(A) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon and sturgeon may be taken for commercial purposes by gill net during the following open period:

(B) 5:00 p.m., March 1, 2005 to 5:00 a.m., March 2, 2005.

(4) During the spring chinook tangle net fishery:

(a) It is *unlawful* to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4-1/4 inches stretched taut.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the headline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4-1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

(b) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, along with a red cork every 25 fathoms as required in (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(10) It is *unlawful* for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is *unlawful* to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, nonadipose fin-clipped chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) All salmon and steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39-1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1-3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have in possession a valid certificate issued by a representative of the Oregon Department of Fish and Wildlife (ODFW) or the Washington Department of Fish and Wildlife (WDFW) that indicates the fisher had attended a one-day workshop hosted by ODFW or WDFW to educate fishers on regulations and best methods for conduct of the fishery. No individual may obtain more than one tangle net certificate. The certificate must be displayed to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers upon request.

(15) Nothing in this section sets any precedent for any fishery after the 2005 spring chinook fishery. The fact that an individual may hold a tangle net certificate in spring 2005 does not entitle the certificate holder to participate in any other fishery. If ODFW authorizes a tangle net fishery in spring 2006 or at any other time, ODFW may establish qualifications and requirements that are different from those established for 2005. In particular, ODFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

(16) As authorized by OAR-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-B sanctuary, Abernathy Creek, Cowlitz River, Kalama-B sanctuary, and Lewis-B sanctuary are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp) f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. 3-22-04, cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05

Adm. Order No.: DFW 10-2005(Temp)

Filed with Sec. of State: 3-2-2005

Certified to be Effective: 3-15-05 thru 4-30-05

Notice Publication Date:

Rules Amended: 635-003-0004

Subject: This rule will implement modifications of season and size limits adopted for Oregon Ocean Commercial Troll Salmon seasons as established by National Marine Fisheries Service (NMFS) and National Oceanic and Atmospheric Administration (NOAA).

Rules Coordinator: Katie Thiel—(503) 947-6033

ADMINISTRATIVE RULES

635-003-0004

Inclusions and Modifications

(1) OAR 635-003-0005 through 635-003-0076 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart H**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart H**, provides requirements for commercial salmon fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) This rule contains requirements which modify commercial salmon fishing regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean commercial salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subpart H)**.

(4) General Requirements, Definitions, Restrictions or Exceptions: Vessels prevented by unsafe weather conditions or mechanical problems from meeting management area landing restrictions, must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. Notification shall include the vessel name, port where delivery will be made, approximate number of salmon (by species) on board, and estimated time of arrival.

(5) South of Cape Falcon to the Oregon-California border:

(a) Open for all salmon except coho March 15–April 30;

(b) It is *unlawful* to take chinook salmon less than 27 inches in length;

(c) It is *unlawful* to retain incidentally caught halibut during the March/April salmon season;

(d) It is *unlawful* to fish with gear having more than four spreads per wire, and only single point, single shank barbless hooks are allowed;

(e) A triangular area offshore is open to the retention of all chinook salmon consistent with seasons adopted by the Pacific Fishery Management Council in adjacent waters, except that prior to August 1 only fin-clipped chinook salmon may be retained in this area. This triangular area extends from the green buoy approximately one-half mile offshore from the mouth of Tillamook Bay to points about three-quarter mile north of the north jetty and approximately one and one-quarter miles south of the south jetty.

(6) Humbug Mountain, Oregon, to Humboldt South Jetty: When the fishery is closed north of the Oregon/California border and open to the south, vessels with fish on board taken in the open area may request authorization to temporarily moor in Brookings, Oregon, prior to landing in California. Such vessels shall first notify the Chetco River Coast Guard Station via VHF Channel 22A between the hours of 0500 and 2200. Proper notification shall include the vessel name, number of fish on board, and estimated time of arrival.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 40-1995(Temp), f. & cert. ef. 5-18-95; FWC 62-1995(Temp), f. 7-27-95, cert. ef. 7-28-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 26-1996(Temp), f. 5-16-96, cert. ef. 5-17-96; FWC 31-1996(Temp), f. & cert. ef. 6-4-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 33-1997(Temp), f. & cert. ef. 5-28-97; FWC 44-1997(Temp), f. & cert. ef. 8-13-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 36-1998(Temp), f. 5-12-98, cert. ef. 5-13-98 thru 5-15-98; DFW 38-1998(Temp), f. & cert. ef. 5-15-98 thru 6-15-98; DFW 39-1998(Temp), f. 5-19-98, cert. ef. 5-20-98 thru 5-23-98; DFW 44-1998(Temp), f. 6-1-98, cert. ef. 6-2-98 thru 6-4-98; DFW 64-1998(Temp), f. 8-14-98, cert. ef. 8-15-98 thru 8-21-98; DFW 65-1998(Temp), f. & cert. ef. 8-21-98 thru 8-31-98; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 45-2000(Temp), f. 8-10-00, cert. ef. 8-11-00 thru 8-31-00; DFW 46-2000(Temp), f. 8-10-00, cert. ef. 8-10-00 thru 9-30-00; DFW 49-2000(Temp), f. 8-17-00, cert. ef. 8-18-00 thru 9-30-00; DFW 56-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 9-30-00; DFW 59-2000(Temp), f. & cert. ef. 9-6-00 thru 9-30-00; DFW 73-2000(Temp), f. 10-26-00, cert. ef. 10-28-00 thru 11-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 48-2001(Temp), f. 6-14-01, cert. ef. 6-15-01 thru 6-30-01; DFW 58-2001(Temp), f. 7-18-01, cert. ef. 7-20-01 thru 9-30-01; DFW 67-2001(Temp), f. 8-2-01, cert. ef. 8-3-01 thru 9-30-01; DFW 69-2001(Temp), f. & cert. ef. 8-8-01 thru 9-30-01; DFW 74-2001(Temp), f. & cert. ef. 8-17-01 thru 9-30-01; DFW 83-2001(Temp), f. 8-30-01, cert. ef. 8-31-01 thru 9-30-01; DFW 22-2002(Temp), f. 3-19-02, cert. ef. 3-20-02 thru 4-30-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 58-2002(Temp), f. 6-6-02, cert. ef. 6-7-02 thru 6-30-02; DFW 65-2002(Temp), 6-27-02, cert. ef. 7-1-02 thru 12-27-02; DFW 72-2002(Temp), f. 7-11-02 cert. ef. 7-12-02 thru 12-31-02; DFW 76-2002(Temp), f. 7-25-02, cert. ef. 7-26-02 thru 12-31-02; DFW 77-2002(Temp), f. & cert. ef. 7-26-02 thru 12-31-02; DFW 84-2002(Temp), f. 8-8-02, cert. ef. 8-9-02 thru 12-31-02; DFW 86-2002(Temp), f. & cert. ef. 8-9-02 thru 12-31-02; DFW 92-2002(Temp), f. & cert. ef. 8-22-02 thru 12-31-02; DFW 101-2002(Temp), f. & cert. ef. 9-9-02 thru 12-31-02; DFW 111-2002(Temp), f. 10-8-02, cert. ef. 10-14-02 thru 12-31-02; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 47-2003(Temp), f. 6-5-03, cert. ef. 6-6-03 thru 6-30-03; Administrative correction, 2-18-05; DFW 10-2005(Temp), f. 3-2-05, cert. ef. 3-15-05 thru 4-30-05

Adm. Order No.: DFW 11-2005(Temp)

Filed with Sec. of State: 3-2-2005

Certified to be Effective: 3-3-05 thru 7-31-05

Notice Publication Date:

Rules Amended: 635-042-0022

Rules Suspended: 635-042-0022(T)

Subject: This rule will extend the spring chinook gillnet commercial fishery in the Columbia River mainstem. Revision is consistent with action taken March 2, 2005 by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0022

Spring Chinook Gill Net and Tangle Net Fisheries

(1) Adipose fin-clipped chinook salmon, sturgeon and shad may be taken by gill net or tangle net for commercial purposes from the mouth of the Columbia River upstream to Kelley Point (Zones 1–3 and part of Zone 4).

(a) Individual fishing periods will not exceed sixteen hours in length during small mesh fisheries and twenty-four hours in length during large mesh fisheries. Fishing periods may occur on Tuesdays and Thursdays, depending upon results from test fisheries or full fleet fisheries conducted prior to each specified weekday.

(b) White sturgeon possession and sales restrictions by each participating vessel will be determined inseason based on gear type and number of fish remaining on the fish guideline.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring chinook gill net fishery:

(a) It is *unlawful* to use a gill net having a mesh size less than 9 inches and more than 9-3/4 inches. Use of monofilament nets is allowed.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(c) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon and sturgeon may be taken for commercial purposes by gill net during the following open period:

(A) 5:00 p.m., March 1, 2005 to 5:00 a.m., March 2, 2005.

(B) 6:00 p.m., March 3, 2005 to 6:00 a.m., March 4, 2005.

(4) During the spring chinook tangle net fishery:

(a) It is *unlawful* to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4-1/4 inches stretched taut.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4-1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

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(b) Tangle nets constructed with a steelhead excluder panel, weed-lines, or droppers, along with a red cork every 25 fathoms as required in (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(10) It is unlawful for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is unlawful to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, nonadipose fin-clipped chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) All salmon and steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39-1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1-3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have in possession a valid certificate issued by a representative of the Oregon Department of Fish and Wildlife (ODFW) or the Washington Department of Fish and Wildlife (WDFW) that indicates the fisher had attended a one-day workshop hosted by ODFW or WDFW to educate fishers on regulations and best methods for conduct of the fishery. No individual may obtain more than one tangle net certificate. The certificate must be displayed to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers upon request.

(15) Nothing in this section sets any precedent for any fishery after the 2005 spring chinook fishery. The fact that an individual may hold a tangle net certificate in spring 2005 does not entitle the certificate holder to participate in any other fishery. If ODFW authorizes a tangle net fishery in spring 2006 or at any other time, ODFW may establish qualifications and requirements that are different from those established for 2005. In particular, ODFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

(16) As authorized by OAR-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-B sanctuary, Abernathy Creek, Cowlitz River, Kalama-B sanctuary, and Lewis-B sanctuary are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp) f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. 3-22-04, cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. 3-2-05, cert. ef. 3-3-05 & 7-31-05

Adm. Order No.: DFW 12-2005

Filed with Sec. of State: 3-9-2005

Certified to be Effective: 3-9-05

Notice Publication Date: 11-1-04

Rules Adopted: 635-110-0000, 635-110-0010, 635-110-0020, 635-110-0030, 635-110-0040

Rules Amended: 635-043-0096

Subject: These rules adopt the Oregon Wolf Conservation and Management Plan and associated technical rules, and amend existing rules to ensure consistency with the Plan.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-043-0096

Harassing Wildlife Causing Damage

Administrative Rules 635-043-0100 through 635-043-0115 govern harassment of wildlife to control damage, except for wolves, which are addressed in 635-110-0010 through 635-110-0030.

Stat. Auth.: ORS 183 & 496

Stats. Implemented: ORS 183 & 496

Hist.: FWC 49-1991, f. & cert. ef. 5-13-91; DFW 12-2005, f. & cert. ef. 3-9-05

635-110-0000

Wolf Conservation and Management Plan

The document entitled "Oregon Wolf Conservation and Management Plan" dated February, 2005 is incorporated here by reference as administrative rule. Copies may be obtained at the Salem headquarters office of the Oregon Department of Fish and Wildlife, 3406 Cherry Avenue NE, Salem, OR 97303. This document includes program direction, objectives and strategies to fulfill management, research, and habitat needs. It is also intended as an informational document to assist resource management agencies with their wildlife program. As of February 11, 2005, those portions of the plan which authorize harassment or take of wolves are preempted by the endangered status of the gray wolf under the federal Endangered Species Act. Once federal protections are reduced to a level below that of Oregon law, those portions of the plan will govern harassment and take of wolves in Oregon.

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

Stats. Implemented: ORS 496.171 - 496.192, 497.298, 497.308, 498.002, 498.006, 498.012 & 498.026

Hist.: DFW 12-2005, f. & cert. ef. 3-9-05

635-110-0010

Harassment and Take of Wolves during Phase I (Conservation)

NOTE: as of February 11, 2005, these rules are pre-empted by the endangered status of the gray wolf under the federal Endangered Species Act. Once federal protections are reduced to a level below that of Oregon law, these rules will govern harassment and take of wolves in Oregon.

(1) This rule describes the types of harassment and take of wolves allowed by persons outside ODFW (or ODFW or Wildlife Services acting as their agent) during Phase I — (Conservation: 0-4 breeding pairs) as called for in chapter III of the Oregon Wolf Conservation and Management Plan. Other chapters of the Plan authorize ODFW to take wolves for other specified wildlife management purposes. For OAR 635-110-0010, 635-110-0020 and 635-110-0030, "livestock" means raptures, psittacine, horses, jackasses, cattle, llamas, alpacas, sheep, goats, swine, domesticated fowl, any fur-bearing animal bred and maintained (commercially or otherwise) within pens, cages and hutches, bison and working dogs. "Working dogs" means guarding dogs and herding dogs.

(2) Non-injurious harassment.

(a) Subject to the conditions specified in paragraph (c), the following persons may use non-injurious harassment against wolves without a permit:

(A) Landowners (or their agents) on their own land; or

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(B) Grazing permittees legally using public land under valid livestock grazing allotments.

(b) Non-injurious harassment means scaring off a wolf (or wolves) without doing bodily harm, and includes (but is not limited to) firing shots in the air, making loud noises or otherwise confronting the wolf (or wolves).

(c) Non-injurious harassment is allowed without a permit under this rule only if:

(A) The wolf (or wolves) is in the act of testing or chasing livestock, is attempting to test or chase livestock or is in close proximity of livestock;

(B) The person encounters the wolf (or wolves) unintentionally (i.e., the person is not stalking or searching for wolves);

(C) The harassment in fact does not result in injury to the wolf (or wolves); and

(D) The harassment is reported to ODFW within 48 hours.

(d) Any non-injurious harassment that does not meet each requirement of this rule requires a permit in advance from ODFW.

(3) Non-lethal injurious harassment.

(a) Subject to the conditions specified in paragraph (c), in addition to state or state authorized agents, the following persons may use non-lethal injurious harassment against wolves by permit:

(A) Landowners (or their designated agents) on their own land;

(B) Grazing permittees legally using public land under valid livestock grazing allotments.

(b) Non-lethal injurious harassment means scaring off a wolf (or wolves) without killing but with some injury to the wolf. Wolves may be pursued (unintentional encounters are not required).

(c) Non-lethal injurious harassment is allowed by permit from ODFW only if:

(A) ODFW confirms persistent wolf activity or wolf depredation on livestock in the area. "Persistent wolf activity" means loitering, testing, worrying, or otherwise disrupting livestock during a 48 hour period;

(B) The applicant confers with ODFW to determine the most effective harassment method;

(C) ODFW considers the location of known den sites;

(D) The harassment in fact does not result in the death of a wolf;

(E) No unreasonable circumstances exist that attract wolf/livestock conflict; and

(F) The harassment is reported to ODFW within 48 hours.

(d) Permits for non-lethal injurious harassment remain valid for the livestock grazing season in which issued, provided the livestock operator complies with all applicable laws, including permit conditions. The agency shall inform harassment permit holders of non-lethal methods for minimizing wolf-livestock conflict and provide assistance upon request. Receiving future lethal control permits is contingent upon documentation of efforts to use non-lethal methods.

(4) Relocation. ODFW will authorize relocation by state personnel when a wolf (or wolves) becomes inadvertently involved in a situation, or is present in an area, that could result in conflict with humans or harm to the wolf. The relocation will be designed to prevent conflict with humans or reduce the possibility of harm to the wolf. The wolf (or wolves) would be relocated to the nearest wilderness area at the direction of ODFW.

(5) Lethal take of wolves in the act of attacking livestock.

(a) Subject to the conditions specified in paragraph (c) and with a permit from ODFW, the following persons may use lethal force against wolves in the act of attacking livestock:

(A) Landowners (or their agents) on their own land; or

(B) Grazing permittees using public land.

(b) A wolf is "in the act of attacking livestock" if it is biting, wounding or killing livestock.

(c) Lethal force is allowed by permit from ODFW only if:

(A) ODFW confirms that wolves previously have wounded or killed livestock in the area and efforts to resolve the problem have been deemed ineffective;

(B) The wolf is seen in the act of attacking, not testing or scavenging;

(C) There is fresh evidence of the attack (e.g., visible wounds, tracks demonstrating a chase occurred);

(D) The wolf carcass is not removed or disturbed;

(E) The use of lethal force is reported to ODFW or Wildlife Services within 24 hours;

(F) No unreasonable circumstances exist that attract wolf/livestock conflict; and

(G) Either ODFW or Wildlife Services confirms that the wound was caused by a wolf (or wolves).

NOTE: the Oregon Wolf Conservation and Management Plan calls for allowing lethal take of wolves in this situation *without a permit on private land*. However, the

Plan recognizes that because current statute requires a permit, implementing this portion of the Plan depends upon amendment of the statute by the 2005 legislature. Should the legislature make that statutory change, the Commission will amend this rule to allow for take without permit.

(6) Lethal take to deal with chronic depredation.

(a) ODFW may authorize its personnel, authorized agents, or Wildlife Services, to use lethal force on wolves anywhere at a property owner or permittee's request if:

(A) ODFW confirms that the property or an adjacent property has had either:

(i) Two confirmed depredations by wolves on livestock; or

(ii) One confirmed depredation followed by up to three attempted depredations (testing or stalking).

(B) The requester documents unsuccessful attempts to solve the situation through non-lethal means;

(C) No unreasonable conditions exist to cause the wolf-livestock conflict; and

(D) The requester has complied with applicable laws and the conditions of any harassment or take permit.

(b) When authorized, lethal take under this paragraph will be taken only by ODFW, authorized ODFW agents, or Wildlife Services personnel.

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

Stats. Implemented: ORS 496.171 - 496.192, 497.298, 497.308, 498.002, 498.006, 498.012 & 498.026

Hist.: DFW 12-2005, f. & cert. ef. 3-9-05

635-110-0020

Harassment and Take of Wolves During Phase II (Management)

NOTE: as of February 11, 2005, these rules are pre-empted by the endangered status of the gray wolf under the federal Endangered Species Act. Once federal protections are reduced to a level below that of Oregon law, these rules will govern harassment and take of wolves in Oregon.

(1) This rule describes the types of harassment and take of wolves allowed by persons outside ODFW (or ODFW or Wildlife Services acting as their agent) during Phase II — (Management: 5–7 breeding pairs) as called for in chapter III of the Oregon Wolf Conservation and Management Plan. Other chapters of the Plan authorize ODFW to take wolves for other specified wildlife management purposes.

(2) Non-injurious harassment of wolves is allowed under the same conditions as in Phase I (OAR 635-110-0010(2)).

(3) Non-lethal injurious harassment.

(a) Non-lethal injurious harassment is allowed without a permit on private land by landowners or their designated agents. Landowners are encouraged to use non-injurious techniques first. There must be no unreasonable circumstances that attract wolf-livestock conflict, and the harassment must be reported to ODFW within 48 hours.

(b) Non-lethal injurious harassment is allowed by permit on public land by grazing permittees who are legally using public land under valid livestock grazing allotments and upon the following conditions:

(A) ODFW confirms persistent wolf activity or wolf depredation on livestock. "Persistent wolf activity" means loitering, testing, worrying, or otherwise disrupting livestock during a 48 hour period;

(B) ODFW considers the location of known wolf sites;

(C) There are no unreasonable circumstances at the site which generate wolf/livestock conflict; and

(D) The harassment is reported to ODFW within 48 hours.

(c) As to non-lethal injurious harassment on either private or public land, pursuing wolves is allowed.

(4) Relocation of wolves will be considered under the same circumstances as in Phase I (OAR 635-110-0010(4)).

(5) Lethal take of wolves in the act of attacking livestock is allowed under the same conditions as in Phase I (OAR 635-110-0010(5)).

NOTE: the Oregon Wolf Conservation and Management Plan calls for allowing lethal take of wolves in this situation *without a permit on private or public land*. However, the Plan recognizes that because current statute requires a permit, implementing this portion of the Plan depends upon amendment of the statute by the 2005 legislature. Should the legislature make that statutory change, the Commission will amend this rule to allow for take without permit.

(6) Lethal take of wolves to deal with chronic depredation.

(a) State employees or agents are authorized to use lethal force under the same conditions as in Phase I (635-110-0010(6)).

(b) Subject to the conditions specified in paragraph (c) and with a limited duration permit from ODFW, the following persons may use lethal force to deal with chronic depredation:

(A) Landowners (or their agents) on their own land; or

(B) Grazing permittees legally using public land.

(c) ODFW will issue a permit to use lethal force to deal with chronic depredation only if:

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(A) ODFW (or its agent) confirms that the property, an adjacent private parcel or the grazing allotment has had at least two depredations by wolves on livestock;

(B) ODFW determines that wolves are routinely present on that property and present a significant risk to livestock;

(C) There are no unreasonable circumstances at the site which generate wolf/livestock conflict;

(D) The applicant is in compliance with applicable laws and the terms of any previous wolf permit;

(E) The applicant documents use of non-lethal methods; and

(F) Any wolf taken is considered property of the state and reported to ODFW within 48 hours.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.171 - 496.192, 497.298, 497.308, 498.002, 498.006, 498.012 & 498.026
Hist.: DFW 12-2005, f. & cert. ef. 3-9-05

635-110-0030

Harassment and Take of Wolves During Phase III

NOTE: as of February 11, 2005, these rules are pre-empted by the endangered status of the gray wolf under the federal Endangered Species Act. Once federal protections are reduced to a level below that of Oregon law, these rules will govern harassment and take of wolves in Oregon.

(1) This rule describes the types of harassment and take of wolves allowed by persons outside ODFW (or ODFW or Wildlife Services acting as their agent) during Phase III (more than 7 packs) as called for in chapter III of the Oregon Wolf Conservation and Management Plan. Other chapters of the Plan authorize ODFW to take wolves for other specified wildlife management purposes.

(2) Non-injurious harassment of wolves is allowed under the same conditions as in Phase I (OAR 635-110-0010(2)).

(3) Non-lethal injurious harassment is allowed under the same conditions as in Phase II (OAR 635-110-0020(3)).

(4) Relocation of wolves will be considered under the same circumstances as in Phase I (OAR 635-110-0010(4)).

(5) Lethal take of wolves in the act of attacking livestock is allowed under the same conditions as for Phase II (OAR 635-110-0020(5)).

NOTE: the Oregon Wolf Conservation and Management Plan calls for allowing lethal take of wolves in this situation *without a permit on private or public land*. However, the Plan recognizes that because current statute requires a permit, implementing this portion of the Plan depends upon amendment of the statute by the 2005 legislature. Should the legislature make that statutory change, the Commission will amend this rule to allow for take without permit.

(6) Lethal take of wolves to deal with chronic depredation is allowed under the same conditions as for Phase II (OAR 635-110-0020(6)).

(7) The Commission will authorize controlled take of wolves by special permit in specific areas where necessary to address chronic wolf-livestock conflicts or ungulate population declines. "Chronic" means two livestock depredations have been confirmed by ODFW or Wildlife Services, or one depredation followed by up to three attempted depredations (testing or stalking). The Commission may also choose to authorize such controlled take on private lands where the landowner is willing to provide access.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.171 - 496.192, 497.298, 497.308, 498.002, 498.006, 498.012 & 498.026
Hist.: DFW 12-2005, f. & cert. ef. 3-9-05

635-110-0040

Incidental Take of Wolves

Any person may apply for a permit to authorize take of a gray wolf (or wolves) incidental to an otherwise lawful activity, as per OAR 635-100-0170. However, ORS 496.172(4) prohibits the Commission from issuing an incidental take permit for a species that is federally listed.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.171 - 496.192, 497.298, 497.308, 498.002, 498.006, 498.012 & 498.026
Hist.: DFW 12-2005, f. & cert. ef. 3-9-05

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Adm. Order No.: DFW 13-2005(Temp)

Filed with Sec. of State: 3-7-2005

Certified to be Effective: 3-7-05 thru 7-31-05

Notice Publication Date:

Rules Amended: 635-042-0022

Rules Suspended: 635-042-0022(T)

Subject: This rule will extend the spring chinook gillnet commercial fishery in the Columbia River mainstem. Revision is consistent with action taken March 7, 2005 by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0022

Spring Chinook Gill Net and Tangle Net Fisheries

(1) Adipose fin-clipped chinook salmon, sturgeon and shad may be taken by gill net or tangle net for commercial purposes from the mouth of the Columbia River upstream to Kelley Point (Zones 1-3 and part of Zone 4).

(a) Individual fishing periods will not exceed sixteen hours in length during small mesh fisheries and twenty-four hours in length during large mesh fisheries. Fishing periods may occur on Tuesdays and Thursdays, depending upon results from test fisheries or full fleet fisheries conducted prior to each specified weekday.

(b) White sturgeon possession and sales restrictions by each participating vessel will be determined inseason based on gear type and number of fish remaining on the fish guideline.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring chinook gill net fishery:

(a) It is *unlawful* to use a gill net having a mesh size less than 9 inches and more than 9-3/4 inches. Use of monofilament nets is allowed.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(c) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon and sturgeon may be taken for commercial purposes by gill net during the following open period:

(A) 5:00 p.m., March 1, 2005 to 5:00 a.m., March 2, 2005.

(B) 6:00 p.m., March 3, 2005 to 6:00 a.m., March 4, 2005.

(C) 6:00 p.m., March 8, 2005 to 6:00 a.m., March 9, 2005.

(4) During the spring chinook tangle net fishery:

(a) It is *unlawful* to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4-1/4 inches stretched taut.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4-1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

(b) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, along with a red cork every 25 fathoms as required in (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

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(10) It is unlawful for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is unlawful to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, nonadipose fin-clipped chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) All salmon and steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39-1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1-3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have in possession a valid certificate issued by a representative of the Oregon Department of Fish and Wildlife (ODFW) or the Washington Department of Fish and Wildlife (WDFW) that indicates the fisher had attended a one-day workshop hosted by ODFW or WDFW to educate fishers on regulations and best methods for conduct of the fishery. No individual may obtain more than one tangle net certificate. The certificate must be displayed to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers upon request.

(15) Nothing in this section sets any precedent for any fishery after the 2005 spring chinook fishery. The fact that an individual may hold a tangle net certificate in spring 2005 does not entitle the certificate holder to participate in any other fishery. If ODFW authorizes a tangle net fishery in spring 2006 or at any other time, ODFW may establish qualifications and requirements that are different from those established for 2005. In particular, ODFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

(16) As authorized by OAR-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-B sanctuary, Abernathy Creek, Cowlitz River, Kalama-B sanctuary, and Lewis-B sanctuary are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp), f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. & cert. ef. 3-22-04, cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05;

DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. 3-2-05, cert. ef. 3-3-05 & 7-31-05; DFW 13-2005(Temp), f. & cert. ef. 3-7-05 thru 7-31-05

Adm. Order No.: DFW 14-2005(Temp)

Filed with Sec. of State: 3-10-2005

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Notice Publication Date:

Rules Amended: 635-042-0022

Rules Suspended: 635-042-0022(T)

Subject: This rule will extend the spring chinook gillnet commercial fishery in the Columbia River mainstem. Revision is consistent with action taken March 9, 2005 by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0022

Spring Chinook Gill Net and Tangle Net Fisheries

(1) Adipose fin-clipped chinook salmon, sturgeon and shad may be taken by gill net or tangle net for commercial purposes from the mouth of the Columbia River upstream to Kelley Point (Zones 1-3 and part of Zone 4).

(a) Individual fishing periods will not exceed sixteen hours in length during small mesh fisheries and twenty-four hours in length during large mesh fisheries. Fishing periods may occur on Tuesdays and Thursdays, depending upon results from test fisheries or full fleet fisheries conducted prior to each specified weekday.

(b) White sturgeon possession and sales restrictions by each participating vessel will be determined inseason based on gear type and number of fish remaining on the fish guideline.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring chinook gill net fishery:

(a) It is *unlawful* to use a gill net having a mesh size less than 9 inches and more than 9-3/4 inches. Use of monofilament nets is allowed.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(c) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon and sturgeon may be taken for commercial purposes by gill net during the following open period:

(A) 5:00 p.m., March 1, 2005 to 5:00 a.m., March 2, 2005.

(B) 6:00 p.m., March 3, 2005 to 6:00 a.m., March 4, 2005.

(C) 6:00 p.m., March 8, 2005 to 6:00 a.m., March 9, 2005.

(D) 6:00 p.m., March 10, 2005 to 2:00 p.m., March 11, 2005.

(4) During the spring chinook tangle net fishery:

(a) It is *unlawful* to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4-1/4 inches stretched taut.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats.

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Weedlines or droppers must extend a minimum of 5 feet above the 4-1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

(b) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, along with a red cork every 25 fathoms as required in (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(10) It is unlawful for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is unlawful to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, nonadipose fin-clipped chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) All salmon and steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39-1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1-3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have in possession a valid certificate issued by a representative of the Oregon Department of Fish and Wildlife (ODFW) or the Washington Department of Fish and Wildlife (WDFW) that indicates the fisher had attended a one-day workshop hosted by ODFW or WDFW to educate fishers on regulations and best methods for conduct of the fishery. No individual may obtain more than one tangle net certificate. The certificate must be displayed to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers upon request.

(15) Nothing in this section sets any precedent for any fishery after the 2005 spring chinook fishery. The fact that an individual may hold a tangle net certificate in spring 2005 does not entitle the certificate holder to participate in any other fishery. If ODFW authorizes a tangle net fishery in spring 2006 or at any other time, ODFW may establish qualifications and requirements that are different from those established for 2005. In particular, ODFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

(16) As authorized by OAR-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokom-B sanctuary, Abernathy Creek, Cowlitz River, Kalama-B sanctuary, and Lewis-B sanctuary are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp) f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. & cert. ef. 3-22-04, cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. & cert. ef. 3-3-05 & 7-31-05; DFW 13-2005(Temp), f. & cert. ef. 3-7-05 thru 7-31-05; DFW 14-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05

Adm. Order No.: DFW 15-2005(Temp)

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Notice Publication Date:

Rules Amended: 635-042-0145

Subject: Amend rule to extend the winter season for commercial fishing for salmon in Youngs Bay. Revisions are consistent with action taken March 9, 2005 by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0145

Youngs Bay Salmon Season

Salmon, sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(1) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (a), the spring fishery, paragraph (b), and summer fishery, paragraph (c), as follows:

(a) Winter Season:

6:00 p.m. February 16, 2005–6:00 a.m. February 17, 2005;
6:00 p.m. February 19, 2005–12 Noon February 20, 2005;
6:00 p.m. February 23, 2005–6:00 a.m. February 24, 2005;
6:00 p.m. February 26, 2005–12 Noon February 27, 2005;
6:00 p.m. March 2, 2005–6:00 a.m. March 3, 2005;
6:00 p.m. March 5, 2005–12 Noon March 6, 2005;
6:00 p.m. March 9, 2005–6:00 a.m. March 10, 2005.
6:00 p.m. March 12, 2005–12:00 p.m. March 13, 2005.

(b) Spring Season:

6:00 p.m. April 21, 2005–6:00 a.m. April 22, 2005;
6:00 p.m. April 25, 2005–6:00 a.m. April 26, 2005;
6:00 p.m. April 28, 2005–6:00 a.m. April 29, 2005;
6:00 p.m. May 2, 2005–12 Noon May 3, 2005;
6:00 p.m. May 5, 2005–12 Noon May 6, 2005;
12 Noon May 9, 2005–12 Noon May 13, 2005;
12 Noon May 16, 2005–12 Noon May 20, 2005;
12 Noon May 23, 2005–12 Noon May 27, 2005;
12 Noon May 30, 2005–12 Noon June 3, 2005;
12 Noon June 6, 2005–12 Noon June 10, 2005;
12 Noon June 14, 2005–12 Noon June 17, 2005.

(c) Summer Season:

12 Noon June 22, 2005–12 Noon June 24, 2005;
12 Noon June 29, 2005–12 Noon July 1, 2005;
12 Noon July 6, 2005–6:00 p.m. July 7, 2005;
12 Noon July 13, 2005–6:00 p.m. July 14, 2005;
12 Noon July 20, 2005–6:00 p.m. July 21, 2005;
12 Noon July 27, 2005–6:00 p.m. July 28, 2005;

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. Monofilament gillnets are allowed. It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter season from February 16, 2005 to March 13, 2005. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches during the spring and summer seasons from April 21, 2005 to July 28, 2005.

(3) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. &

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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 76-2001(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05

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Adm. Order No.: DFW 16-2005(Temp)
Filed with Sec. of State: 3-10-2005
Certified to be Effective: 3-10-05 thru 7-31-05
Notice Publication Date:
Rules Amended: 635-042-0160
Subject: Amend rule to extend the winter season for commercial fishing in Blind Slough. Revisions are consistent with action taken March 9, 2005 by the Columbia River Compact.
Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0160

Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon, sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the spring fishery in paragraphs (1)(a)(A) or (1)(a)(B) of this rule in those waters of Blind Slough. Blind Slough is those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge. In addition, Knappa Slough is open to fishing for salmon, sturgeon and shad during open fishing periods described as the spring fishery in paragraph (1)(a)(B) of this rule. Knappa Slough is all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in paragraph (A), and the spring fishery in paragraph (B). The seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough Only:

February 16–February 17, 2005; February 19–February 20, 2005; February 23–February 24, 2005; February 26–February 27, 2005; March 2–March 3, 2005; March 5–March 6, 2005; and March 9–March 10, 2005 and March 12–March 13, 2005.

(B) Blind and Knappa Sloughs:

April 21–April 22, 2005; April 25–April 26, 2005; April 28–April 29, 2005; May 2–May 3, 2005; May 5–May 6, 2005; May 9–May 10, 2005; May 12–May 13, 2005; May 16–May 17, 2005; May 19–May 20, 2005; May 23–May 24, 2005; May 26–May 27, 2005; May 30–May 31, 2005; June 2–June 3, 2005; June 6–June 7, 2005; June 9–June 10, 2005; June 13–June 14, 2005 and June 16–June 17, 2005.

(b) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period.

(c) Gear restrictions are as follows:

(A) During the winter fishery, outlined above (1)(a)(A), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is *unlawful* to use a gill net having a mesh size that is less than 7- inches;

(B) During the spring fishery, outlined above (1)(a)(B), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches.

(2) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp) f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05

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Adm. Order No.: DFW 17-2005(Temp)
Filed with Sec. of State: 3-15-2005
Certified to be Effective: 3-15-05 thru 4-15-05
Notice Publication Date:
Rules Amended: 635-003-0004
Rules Suspended: 635-003-0004(T)
Subject: This rule will implement inseason modifications to the Oregon Ocean Commercial Troll Salmon season adopted by the Pacific Fishery Management Council.
Rules Coordinator: Katie Thiel—(503) 947-6033

635-003-0004

Inclusions and Modifications

(1) OAR 635-003-0005 through 635-003-0076 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart H**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart H**, provides requirements for commercial salmon fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) This rule contains requirements which modify commercial salmon fishing regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean commercial salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subpart H)**.

(4) General Requirements, Definitions, Restrictions or Exceptions: Vessels prevented by unsafe weather conditions or mechanical problems from meeting management area landing restrictions, must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. Notification shall include the vessel name, port where delivery will be made, approximate number of salmon (by species) on board, and estimated time of arrival.

(5) South of Cape Falcon to the Oregon-California border:

(a) Open for all salmon except coho March 15–March 25, 2005 and April 1–April 15, 2005;

(b) It is *unlawful* to take chinook salmon less than 27 inches in length;

(c) It is *unlawful* to retain incidentally caught halibut during the March/April salmon season;

(d) It is *unlawful* to fish with gear having more than four spreads per wire, and only single point, single shank barbless hooks are allowed;

(e) A triangular area offshore is open to the retention of all chinook salmon consistent with seasons adopted by the Pacific Fishery Management

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Council in adjacent waters, except that prior to August 1 only fin-clipped chinook salmon may be retained in this area. This triangular area extends from the green buoy approximately one-half mile offshore from the mouth of Tillamook Bay to points about three-quarter mile north of the north jetty and approximately one and one-quarter miles south of the south jetty.

(6) Humbug Mountain, Oregon, to Humboldt South Jetty: When the fishery is closed north of the Oregon/California border and open to the south, vessels with fish on board taken in the open area may request authorization to temporarily moor in Brookings, Oregon, prior to landing in California. Such vessels shall first notify the Chetco River Coast Guard Station via VHF Channel 22A between the hours of 0500 and 2200. Proper notification shall include the vessel name, number of fish on board, and estimated time of arrival.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 40-1995(Temp), f. & cert. ef. 5-18-95; FWC 62-1995(Temp), f. 7-27-95, cert. ef. 4-28-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 26-1996(Temp), f. 5-16-96, cert. ef. 5-17-96; FWC 31-1996(Temp), f. & cert. ef. 6-4-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 33-1997(Temp), f. & cert. ef. 5-28-97; FWC 44-1997(Temp), f. & cert. ef. 8-13-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 36-1998(Temp), f. 5-12-98, cert. ef. 5-13-98 thru 5-15-98; DFW 38-1998(Temp), f. & cert. ef. 5-15-98 thru 6-15-98; DFW 39-1998(Temp), f. 5-19-98, cert. ef. 5-20-98 thru 5-23-98; DFW 44-1998(Temp), f. 6-1-98, cert. ef. 6-2-98 thru 6-4-98; DFW 64-1998(Temp), f. 8-14-98, cert. ef. 8-15-98 thru 8-21-98; DFW 65-1998(Temp), f. & cert. ef. 8-21-98 thru 8-31-98; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 45-2000(Temp), f. 8-10-00, cert. ef. 8-11-00 thru 8-31-00; DFW 46-2000(Temp), f. 8-10-00, cert. ef. 8-10-00 thru 9-30-00; DFW 49-2000(Temp), f. 8-17-00, cert. ef. 8-18-00 thru 9-30-00; DFW 56-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 9-30-00; DFW 59-2000(Temp), f. & cert. ef. 9-6-00 thru 9-30-00; DFW 73-2000(Temp), f. 10-26-00, cert. ef. 10-28-00 thru 11-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 48-2001(Temp), f. 6-14-01, cert. ef. 6-15-01 thru 6-30-01; DFW 58-2001(Temp), f. 7-18-01, cert. ef. 7-20-01 thru 9-30-01; DFW 67-2001(Temp), f. 8-2-01, cert. ef. 8-3-01 thru 9-30-01; DFW 69-2001(Temp), f. & cert. ef. 8-8-01 thru 9-30-01; DFW 74-2001(Temp), f. & cert. ef. 8-17-01 thru 9-30-01; DFW 83-2001(Temp), f. 8-30-01, cert. ef. 8-31-01 thru 9-30-01; DFW 22-2002(Temp), f. 3-19-02, cert. ef. 3-20-02 thru 4-30-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 58-2002(Temp), f. 6-6-02, cert. ef. 6-7-02 thru 6-30-02; DFW 65-2002(Temp), 6-27-02, cert. ef. 7-1-02 thru 12-27-02; DFW 72-2002(Temp), f. 7-11-02, cert. ef. 7-12-02 thru 12-31-02; DFW 76-2002(Temp), f. 7-25-02, cert. ef. 7-26-02 thru 12-31-02; DFW 77-2002(Temp), f. & cert. ef. 7-26-02 thru 12-31-02; DFW 84-2002(Temp), f. 8-8-02, cert. ef. 8-9-02 thru 12-31-02; DFW 86-2002(Temp), f. & cert. ef. 8-9-02 thru 12-31-02; DFW 92-2002(Temp), f. & cert. ef. 8-22-02 thru 12-31-02; DFW 101-2002(Temp), f. & cert. ef. 9-9-02 thru 12-31-02; DFW 111-2002(Temp), f. 10-8-02, cert. ef. 10-14-02 thru 12-31-02; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 47-2003(Temp), f. 6-5-03, cert. ef. 6-6-03 thru 6-30-03; Administrative correction, 2-18-05; DFW 10-2005(Temp), f. 3-2-05, cert. ef. 3-15-05 thru 4-30-05; DFW 17-2005(Temp), f. & cert. ef. 3-15-05 thru 4-15-05

Adm. Order No.: DFW 18-2005(Temp)

Filed with Sec. of State: 3-15-2005

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Notice Publication Date:

Rules Amended: 635-041-0065, 635-042-0022, 635-042-0145, 635-042-0160

Rules Suspended: 635-041-0065(T), 635-042-0022(T), 635-042-0145(T), 635-042-0160(T)

Subject: These rules will prohibit Treaty commercial winter fishing in the Bonneville, John Day and The Dalles pools; extend the non-Treaty spring chinook gillnet commercial fishery in the Columbia River mainstem; and extend the commercial fisheries in identified Select Areas. Revisions are consistent with action taken March 14, 2005 by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-041-0065

Winter Salmon Season

(1) Salmon, steelhead, shad, sturgeon, walleye and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, Zone 6, from 6:00 a.m. February 1 to 6:00 p.m. March 21, 2005.

(a) Effective 6:00 p.m., March 16, 2005, the Bonneville and John Day Pools are closed to commercial fishing.

(b) Effective 6:00 p.m., March 19, 2005, The Dalles Pool is closed to commercial fishing.

(2) There are no mesh size restrictions.

(3) Closed areas are set forth in OAR 635-041-0045 remain in effect, with the exception of Spring Creek Hatchery.

(4) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

(5) Pursuant to the regulations defined in OAR 635-041-0005 through 635-041-0030, the platform and hook-and-line fishery is open for subsistence purposes only.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & cert. ef. 1-28-77; FWC 2-1978, f. & cert. ef. 1-31-78; FWC 7-1978, f. & cert. ef. 2-21-78; FWC 2-1979, f. & cert. ef. 1-25-79; FWC 13-1979(Temp), f. & cert. ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & cert. ef. 1-28-80; FWC 1-1981, f. & cert. ef. 1-19-81; FWC 6-1982, f. & cert. ef. 1-28-82; FWC 2-1983, f. 1-21-83, cert. ef. 2-1-83; FWC 4-1984, f. & cert. ef. 1-31-84; FWC 2-1985, f. & cert. ef. 1-30-85; FWC 4-1986(Temp), f. & cert. ef. 1-28-86; FWC 79-1986(Temp), f. & cert. ef. 12-22-86; FWC 2-1987, f. & cert. ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-13-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05

635-042-0022

Spring Chinook Gill Net and Tangle Net Fisheries

(1) Adipose fin-clipped chinook salmon, sturgeon and shad may be taken by gill net or tangle net for commercial purposes from the mouth of the Columbia River upstream to Kelley Point (Zones 1-3 and part of Zone 4).

(a) Individual fishing periods will not exceed sixteen hours in length during small mesh fisheries and twenty-four hours in length during large mesh fisheries. Fishing periods may occur on Tuesdays and Thursdays, depending upon results from test fisheries or full fleet fisheries conducted prior to each specified weekday.

(b) White sturgeon possession and sales restrictions by each participating vessel will be determined inseason based on gear type and number of fish remaining on the fish guideline.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring chinook gill net fishery:

(a) It is *unlawful* to use a gill net having a mesh size less than 9 inches and more than 9-3/4 inches. Use of monofilament nets is allowed.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(c) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon and sturgeon may be taken for commercial purposes by gill net during the following open period:

(A) 5:00 p.m., March 1, 2005 to 5:00 a.m., March 2, 2005.

(B) 6:00 p.m., March 3, 2005 to 6:00 a.m., March 4, 2005.

(C) 6:00 p.m., March 8, 2005 to 6:00 a.m., March 9, 2005.

(D) 6:00 p.m., March 10, 2005 to 2:00 p.m., March 11, 2005.

(E) 6:00 p.m., March 15, 2005 to 6:00 a.m., March 16, 2005.

(4) During the spring chinook tangle net fishery:

(a) It is *unlawful* to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4-1/4 inches stretched taut.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of

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12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4-1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

(b) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, along with a red cork every 25 fathoms as required in (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(10) It is unlawful for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is unlawful to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, nonadipose fin-clipped chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) All salmon and steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39-1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1-3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have in possession a valid certificate issued by a representative of the Oregon Department of Fish and Wildlife (ODFW) or the Washington Department of Fish and Wildlife (WDFW) that indicates the fisher had attended a one-day workshop hosted by ODFW or WDFW to educate fishers on regula-

tions and best methods for conduct of the fishery. No individual may obtain more than one tangle net certificate. The certificate must be displayed to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers upon request.

(15) Nothing in this section sets any precedent for any fishery after the 2005 spring chinook fishery. The fact that an individual may hold a tangle net certificate in spring 2005 does not entitle the certificate holder to participate in any other fishery. If ODFW authorizes a tangle net fishery in spring 2006 or at any other time, ODFW may establish qualifications and requirements that are different from those established for 2005. In particular, ODFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

(16) As authorized by OAR-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-B sanctuary, Abernathy Creek, Cowlitz River, Kalama-B sanctuary, and Lewis-B sanctuary are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp), f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. 3-22-04, cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. 3-2-05, cert. ef. 3-3-05 & 7-31-05; DFW 13-2005(Temp), f. & cert. ef. 3-7-05 thru 7-31-05; DFW 14-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05

635-042-0145

Youngs Bay Salmon Season

Salmon, sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(1) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (a), the spring fishery, paragraph (b), and summer fishery, paragraph (c), as follows:

(a) Winter Season:

6:00 p.m. February 16, 2005–6:00 a.m. February 17, 2005;
6:00 p.m. February 19, 2005–12 Noon February 20, 2005;
6:00 p.m. February 23, 2005–6:00 a.m. February 24, 2005;
6:00 p.m. February 26, 2005–12 Noon February 27, 2005;
6:00 p.m. March 2, 2005–6:00 a.m. March 3, 2005;
6:00 p.m. March 5, 2005–12 Noon March 6, 2005;
6:00 p.m. March 9, 2005–6:00 a.m. March 10, 2005;
6:00 p.m. March 12, 2005–12 Noon March 13, 2005;
6:00 p.m. March 16, 2005–6:00 a.m. March 17, 2005.

(b) Spring Season:

6:00 p.m. April 21, 2005–6:00 a.m. April 22, 2005;
6:00 p.m. April 25, 2005–6:00 a.m. April 26, 2005;
6:00 p.m. April 28, 2005–6:00 a.m. April 29, 2005;
6:00 p.m. May 2, 2005–12 Noon May 3, 2005;
6:00 p.m. May 5, 2005–12 Noon May 6, 2005;
12 Noon May 9, 2005–12 Noon May 13, 2005;
12 Noon May 16, 2005–12 Noon May 20, 2005;
12 Noon May 23, 2005–12 Noon May 27, 2005;
12 Noon May 30, 2005–12 Noon June 3, 2005;
12 Noon June 6, 2005–12 Noon June 10, 2005;
12 Noon June 14, 2005–12 Noon June 17, 2005.

(c) Summer Season:

12 Noon June 22, 2005–12 Noon June 24, 2005;
12 Noon June 29, 2005–12 Noon July 1, 2005;
12 Noon July 6, 2005–6:00 p.m. July 7, 2005;
12 Noon July 13, 2005–6:00 p.m. July 14, 2005;
12 Noon July 20, 2005–6:00 p.m. July 21, 2005;
12 Noon July 27, 2005–6:00 p.m. July 28, 2005.

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. Monofilament gillnets are allowed. It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter season from February 16, 2005 to March 17, 2005. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches during the spring and summer seasons from April 21, 2005 to July 28, 2005.

(3) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

ADMINISTRATIVE RULES

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05

635-042-0160

Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon, sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the spring fishery in paragraphs (1)(a)(A) or (1)(a)(B) of this rule in those waters of Blind Slough. Blind Slough is those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge. In addition, Knappa Slough is open to fishing for salmon, sturgeon and shad during open fishing periods described as the spring fishery in paragraph (1)(a)(B) of this rule. Knappa Slough is all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in paragraph (A), and the spring fishery in paragraph (B). The seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough Only:

February 16–February 17, 2005; February 19–February 20, 2005; February 23–February 24, 2005; February 26–February 27, 2005; March 2–March 3, 2005; March 5–March 6, 2005; and March 9–March 10, 2005; March 12–March 13, 2005; and March 16–March 17, 2005.

(B) Blind and Knappa Sloughs:

April 21–April 22, 2005; April 25–April 26, 2005; April 28–April 29, 2005; May 2–May 3, 2005; May 5–May 6, 2005; May 9–May 10, 2005; May 12–May 13, 2005; May 16–May 17, 2005; May 19–May 20, 2005; May 23–May 24, 2005; May 26–May 27, 2005; May 30–May 31, 2005; June 2–June 3, 2005; June 6–June 7, 2005; June 9–June 10, 2005; June 13–June 14, 2005 and June 16–June 17, 2005.

(b) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period.

(c) Gear restrictions are as follows:

(A) During the winter fishery, outlined above (1)(a)(A), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is *unlawful* to use a gill net having a mesh size that is less than 7-inches;

(B) During the spring fishery, outlined above (1)(a)(B), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is per-

mitted. Monofilament gill nets are allowed. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches.

(2) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp) f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05

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Department of Forestry Chapter 629

Adm. Order No.: DOF 4-2005

Filed with Sec. of State: 3-1-2005

Certified to be Effective: 3-1-05

Notice Publication Date: 10-1-04

Rules Adopted: 629-025-0080

Rules Amended: 629-025-0040, 629-025-0070

Subject: The original administrative rules dealing with recreation use of State Forest Lands were approved in 1995 and addressed many of the use problems and impacts which had been escalating the prior decade. The amended and adopted rules were approved by the Board of Forestry during its January 5, 2005 meeting. These rules addressed 4 areas of concern and issues:

1. Campers that occupy locations that impact sensitive resources and manipulate the existing rule to extend their stay to the point of causing environmental damage.

2. Shooting of firearms in an unacceptable manner that creates unsafe situations, a proliferation of garbage and debris, and locations that suffer from frequent use creating large deposits of glass, cans, shell casings, and other litter.

3. Additional trail management designations to address the existence of a growing system of non-motorized trails (hiking, equestrian, mountain bicycling).

4. The need for policy and procedures for the removal and disposal of unattended personal property.

Rules Coordinator: Gayle Birch—(503) 945-7210

629-025-0040

General Forest Recreation Rules

(1) **Sanitation.**

(a) On all state forest lands, no person shall, unless otherwise authorized:

(A) Dispose of any cans, bottles and other non-flammable trash and garbage except in designated places or receptacles;

(B) Dispose of flammable trash or garbage except by burning in authorized fires, or disposal in designated places or receptacles;

(C) Drain sewage or petroleum products or dump refuse or waste other than wash water except in places or receptacles provided for that purpose;

(D) Dispose of any household, commercial or industrial refuse or waste brought as such from private or municipal property, including but not limited to automobiles, household appliances and furnishings;

(E) Pollute or contaminate water supplies or water used for human consumption; or

(F) Use a refuse container or disposal facility for any purpose other than for which it is supplied.

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(b) No person shall wash any clothing, dishware, cookware, or other materials in any lake, stream, river, or other body of water on State Forest land.

(c) No person shall deposit human waste within 100 feet of any campsite, trail, or body of water. Human waste shall be disposed of by burying to a depth of at least 6 inches.

(d) Where toilet or sewage facilities are provided, no person shall dispose of human waste except in those facilities.

(2) **Occupancy and Use.** On State Forest lands, no person shall:

(a) Camp longer than 21 days out of any 35 day period, more than a total of 60 days during a calendar year, or the period of time permitted by the Forester;

(b) Camp within 25 feet of any body of water or in other areas posted closed to camping by the Department; or

(c) Leave personal property unattended longer than 4 days. Personal property left unattended longer than 4 days, without permission of the Forester, shall be removed by the Department and shall be disposed of in a manner consistent with procedures outlined in OAR 629-025-0080.

(d) Leaving personal property unattended will be considered camping for the purposes of determining the length of stay at a given site.

(3) **Property and Resources.** On all State Forest lands, unless otherwise authorized by the Forester, no person shall:

(a) Deface, disturb, remove or destroy any public property, structures, or any scientific, cultural, archaeological or historic resource, natural object or area;

(b) Deface, remove or destroy plants or their parts, soil, rocks, or minerals, or cave resources, unless advance authorization is obtained in writing from the Forester.

(4) **Animals.**

(a) Any dog, cat, horse or other animal brought into or kept on State Forest lands shall be kept under control at all times.

(b) No horse or other animal shall be hitched or confined in a manner that may cause damage to any tree, shrub, improvement, or structure.

(c) The Forester has the authority to undertake any measures deemed necessary (including removal of the animal from State Forest lands) to protect State Forest resources and to prevent interference by the animal with the safety, comfort, and well-being of others.

(5) **Construction of Trails and Shelters.** On State Forest land, no person shall modify, construct, or cause to be constructed any trail, shelter, building, or other facility or improvement without written permission of the Forester.

(6) **Firewood Collection.**

(a) Persons engaged in lawful camping activity may collect sufficient firewood for their personal use while camped on State Forest land, except where otherwise prohibited in these rules.

(b) No person shall be permitted to remove from State Forest land firewood which has been collected for use while camping on State Forest land, without a valid firewood permit.

(c) Firewood shall be collected only from dead and down material that is 12 inches or less in diameter at its largest point. No standing trees, living or dead, may be felled for conversion into firewood without a valid firewood permit.

(7) **Campfires.**

(a) Fires shall be confined to camp stoves or fire rings or other fireproof structures constructed for such purposes. Such structures shall not exceed four feet in diameter.

(b) All flammable material shall be cleared for a distance of 5 feet around and 10 feet above any fire ring or other structure used to contain a campfire.

(c) No fire shall be left unattended and every fire shall be extinguished before its user leaves the site.

(8) **Traffic Rules.**

(a) When operating a vehicle on State Forest lands, no person shall violate the basic speed rule or exceed posted speed limits, willfully endanger persons or property, or act in a reckless, careless, or negligent manner.

(b) No person shall obstruct or hinder the flow of traffic on any road.

(c) No person shall operate a vehicle on any State forest road in violation of Oregon traffic laws.

(9) **Target Shooting.**

(a) No person shall place targets on live trees or shoot live trees for any purpose.

(b) No person shall shoot across or along any road or trail.

(c) No person shall shoot carelessly, recklessly, or without regard for the safety of any person, or in a manner that endangers, or is likely to endanger, any person or property.

(d) Persons engaged in target shooting shall remove from State Forest land all shell casings, targets, and other debris resulting from their use.

(e) No person shall shoot targets other than those commercially manufactured for the specific purpose of target shooting, except for paper targets privately manufactured by the person or people engaging in target shooting.

(f) No person shall shoot glass of any kind as a target.

(g) No person shall shoot appliances, furniture or other debris determined to be garbage or refuse by an enforcing officer.

(h) Target shooting and other shooting related activity will be prohibited from one half hour after sunset to one half hour before sunrise.

(10) **Concessions.** No person shall:

(a) Operate a concession on State forest land, either fixed or mobile, solicit, sell or offer for sale, peddle, hawk, or vend any goods, wares, merchandise, food, liquids, or services without written permission of the Forester;

(b) Advertise any goods or services by any means whatsoever.

Stat. Auth.: ORS 530.050

Stats. Implemented: ORS 530.010 - 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95; DOF 4-2005, f. & cert. ef. 3-1-05

629-025-0070

Use of Roads and Trails

(1) No person shall:

(a) Operate a motor vehicle off-road, except on a trail designated for that purpose;

(b) Operate a motor vehicle off-road without an approved spark arrester, as specified in OAR 629-043-0015;

(c) Operate a motor vehicle off-road without an adequate noise muffler as defined in ORS 821.220.

(d) Operate a motor vehicle off-road without a valid ATV or snowmobile registration.

(e) Operate a motor vehicle, except snowmobiles, on road cut banks or fill slopes, or in ditches along roads.

(f) Operate an off-road motor vehicle in a manner that damages trails, boardwalks, bridges, water bars, cement blocking, drainage pipes or any other improvement designed to maintain the integrity of the trail.

(g) Operate any motor vehicle off-road from one half hour after sunset to one half hour before sunrise unless equipped with working head and tail lights.

(h) Operate on any road in a Non-Motorized zone, a motor vehicle that is not licensed for use on public roads or highways.

(i) Operate an off-road motor vehicle or snowmobile in violation of ORS 821.010 through 821.320.

(j) Hike, bicycle, use a horse, llama, or other stock animal, or other self-propelled device on a trail not designated for that purpose or in a manner that damages trails, boardwalks, bridges, water bars, cement blocking, drainage pipes or any other improvement designed to maintain the integrity of the trail.

(2) **Road and Trail Closures.** The Forester may, at any time, close all or portions of roads or designated trails, or establish one-way traffic flow on any road or trail.

Stat. Auth.: ORS 530.050

Stats. Implemented: ORS 530.010 - 530.040

Hist.: FB 3-1995, f. & cert. ef. 9-15-95; DOF 4-2005, f. & cert. ef. 3-1-05

629-025-0080

Removing Unattended Personal Property

(1) Unattended personal property includes items which have been left on state-owned forestlands longer than 4 days and are reasonably recognizable as belonging to individual persons and which have apparent utility. Items which have no apparent utility or are in an unsanitary condition are considered junk and will be discarded.

(2) Weapons, drug paraphernalia, and items which reasonably appear to be either stolen or evidence of a crime will be turned over to the appropriate law enforcement agency.

(3) Personal property will be separated during cleanups from trash/debris/junk (which will be immediately discarded) and items to be turned over to law enforcement officials and stored. The personal property shall be stored for no less than 30 days. During that period it will be reasonably available to persons claiming ownership of the personal property.

(4) The Forester will arrange in advance for a location to store personal property. The storage facility should be reasonably secure and located at or near one of the Department's District offices, however, the address of the facility will not be publicized. Instead, a telephone number to arrange an appointment to pick up claimed personal property will be provided. The telephone number should reach an office which is staffed during normal

ADMINISTRATIVE RULES

business hours (8 a.m. to 5 p.m. weekdays). A person claiming property must be able to schedule an appointment at a convenient time (also during business hours).

Stat. Auth.: ORS 530.050
Stats. Implemented: ORS 530.010 - 530.040
Hist.: DOF 4-2005, f. & cert. ef. 3-1-05

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

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

Filed with Sec. of State: 3-1-2005

Certified to be Effective: 3-1-05 thru 8-27-05

Notice Publication Date:

Rules Suspended: 413-330-0070

Subject: Rule 413-330-0070 is suspended to prevent noncompliance with Department of Human Services (Department) temporary rules 410-003-0010 and 410-003-0020, which update, modify and establish Department processes for the selection of contractors, and the award of contracts, grant agreements and agreements made with other governmental agencies. The adoption of rules 410-003-0010 and 410-003-0020 is necessitated by 2003 revisions to ORS 279, the subsequent implementation of Department of Administrative Services (DAS) contracting rules, and by the consolidation of the Department pursuant to Oregon Laws 2001, Chapter 900.

Rule 413-330-0070 was adopted to implement contractor selection rules for the State Office for Services to Families and Children. This Office was incorporated into the Office of Children, Adults and Families (CAF) subsequent to the 2001 Department reorganization. Another result of the Department reorganization was the consolidation of contracting functions and responsibilities under a shared service arrangement administered by the Department Office of Contracts and Procurement. The suspension of rule 413-330-0070 is necessary to bring Department contracting rules and procedures into compliance with Oregon Law and with DAS and Department contracting rules and procedures.

Rules Coordinator: Pat Bougher—(503) 945-5844

413-330-0070

Contract Approval

(1) At minimum, all contracts shall be signed by an authorized representative of the provider and an authorized representative of SOSCF prior to the beginning of services. SOSCF has no authorization to pay for services performed prior to the date of any required approval signature or outside the effective dates of a contract.

(2) The Department of Administrative Services shall approve all personal service contracts of state agencies before any such contract becomes binding and before any service may be performed under the contract, except for the following:

(a) Architectural, engineering, and related services contracts described in ORS 279.712(2);

(b) Client Service Contracts;

(c) Standard Fee Contracts;

(d) Expert Witness Contracts;

(e) Contracts up to \$1,000, unless they are with a contractor who has contracts totaling more than \$2,000 in a fiscal year;

(f) Any contracts for which the Department of Administrative Services has granted an exemption;

(g) Any other contracts for which the Department of Administrative Services has delegated authority.

(3) The Attorney General shall review personal service contracts for legal sufficiency, when the contract establishes payment in excess of \$25,000. The approval of the Attorney General must be given prior to the effective date of the contract or the contract is not binding on the state of Oregon and no service can be performed under the contract.

(4) The Attorney General shall review all intergovernmental agreements with other states and countries.

(5) The Department of Administrative Services has granted SOSCF exemption from requirements to get approval from and report contracts to the Department, in the following categories:

(a) Contracts for day care when the approved contract form is used;

(b) Family Foster Care and Shelter Care Contracts when the approved contract form is used;

(c) Title XIX Psychiatric Residential Treatment provider agreements;

(d) Title IV-E Independent Living Facilitator Contracts, CF 12A.

Stat. Auth.: HB 2004

Stats. Implemented: ORS 291.021

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Suspended by CWP 5-2005(Temp), f. & cert. ef. 3-1-05 thru 8-27-05

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

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

Filed with Sec. of State: 3-1-2005

Certified to be Effective: 3-1-05 thru 8-27-05

Notice Publication Date:

Rules Adopted: 410-003-0010, 410-003-0020

Subject: The 2003 Oregon Legislature revised Oregon contracting law set forth ORS 279. The revised ORS 279 stipulated that the Department of Administrative Services (DAS), and its subject agencies, establish and implement revisions to their respective contracting and procurement rules no later than March 1, 2005. Department derives its authority from DAS to select contractors and award contracts, grant agreements and agreements made with other governmental agencies. Prior to March 1, 2005 Department has been subject to DAS rules set forth in Chapter 125, Divisions 020, 022, 025, and 030. These rules are superseded on March 1, 2005 by rules set forth in DAS Chapter 125, Divisions 246, 247, 248, and 249. Upon March 1, 2005, DAS 125-020, 125-022, 125-025, and 125-030 expire, which necessitates that Department, as a state agency subject to DAS authority, establish and adopt rules to implement the revisions to Oregon contracting rules set forth in ORS 279, 279a, 279b, and 279c. In response to this requirement, and to ensure the continuation of the authority that Department derives from DAS to select contractors and award contracts, grant agreements and agreements made with other governmental agencies, Department elects to adopt rules 410-003-0010 and 410-003-0020. These rules incorporate, with applicable revisions, the rules set forth in DAS Chapter 125, Divisions 246, 247, 248, and 249.

Rules Coordinator: Pat Bougher—(503) 945-5844

410-003-0010

Purpose

This rule updates and corrects the Department of Human Service's (Department) rules for contractor selection processes and award of contracts, grant agreements and agreements made with other governmental agencies authorized in the consolidation of the Department in Oregon Laws 2001, Chapter 900.

Stat. Auth.: ORS 409.050 & OL 2001 c.900 §1 (4)

Stats. Implemented: ORS 344, 409, 411, 414, 418, 427 & 430

Hist.: OMAP 5-2005(Temp), f. & cert. ef. 3-1-05 thru 8-27-05

410-003-0020

Contractor Selection, Award of Grants and Contracts

(1) The Department, in exercising its contract and approval authority under ORS 344, 409, 411, 414, 418, 427 and 430, adopts the provisions of Department of Administrative Services (DAS) Rules 125-020, 125-022, 125-025 and 125-030.

(2) Effective March 1, 2005, upon the termination of the DAS Rules in (1) above, the Department adopts DAS Rules 125-246, 125-247, 125-248 and 125-249 to comply with procurement code that takes effect on that date.

(3) Any reference in the adopted DAS Rules to DAS, State Procurement Office, Department or Division, for purposes of the Department in exercising its contract and approval authority, shall be interpreted to read "Department of Human Services, Office of Contracts and Procurement."

(4) This Rule does not apply to contracts, grants and agreements exempt under ORS 279.015 or effective March 1, 2005, ORS 279A.025(2).

Stat. Auth.: ORS 279.015(1)(e), 279.712(2)(e) & (i), 279A.025, 279A.050(6)(a), 279A.070, 344.530, 344.720, 409-050, 411.910, 414.065, 414.115, 418.005, 427.335 & OL 2001 c.900 §1 (4)

Stats. Implemented: ORS 344, 409, 411, 414, 418, 427 & 430

Hist.: OMAP 5-2005(Temp), f. & cert. ef. 3-1-05 thru 8-27-05

ADMINISTRATIVE RULES

Adm. Order No.: OMAP 6-2005
Filed with Sec. of State: 3-1-2005
Certified to be Effective: 3-31-05
Notice Publication Date: 2-1-05
Rules Amended: 410-121-0157
Rules Repealed: 410-121-0157(T)

Subject: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. OMAP permanently amended rule 410-121-0157 to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. Updates include information from CMS Release #134, dated November 18, 2004.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0157

Participation in the Medicaid Drug Rebate Program

(1) The Oregon Medicaid Pharmaceutical Services Program is a participant in the Centers for Medicare and Medicaid Services (CMS) Medicaid Drug Rebate Program, created by the Omnibus Budget Reconciliation Act (OBRA) of 1990. The Medicaid Drug Rebate Program requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services for States to receive federal funding for outpatient drugs dispensed to Medicaid patients. The drug rebate program is administered by CMS's Center for Medicaid and State Operations (CMSO). Pharmaceutical companies participating in this program have signed agreements with CMS to provide rebates to the Office of Medical Assistance Programs (OMAP) on all their drug products. OMAP will reimburse providers only for outpatient drug products manufactured or labeled by companies participating in this program.

(2) Names and Label Code numbers for participants in the Medicaid Drug Rebate Program are the responsibility of and maintained by CMS. OMAP receives this information from CMS in the form of numbered and dated Releases. OMAP includes in rule by reference, Release #134, dated November 18, 2004, and the OMAP Master Pharmaceutical Manufacturer's Rebate Lists, alphabetical and numeric, by manufacturer. This information is available on the Department of Human Services' website: <http://www.dhs.state.or.us/policy/healthplan/rules/>, and on the CMS website: www.cms.hhs.gov/medicaid/drugs/drughmpg.asp, or by contacting CMS.

(3) OMAP contracts with First Health Services to manage the Medicaid Rebate Dispute Resolution program. Pharmacy providers must verify the accuracy of their Medicaid pharmacy claims with First Health Services within 30 days of request in instances where drug manufacturers dispute their claim information. Verification can be photocopies of drug invoices showing that the billed products were in stock during the time of the date of service.

(4) The actual National Drug Code (NDC) dispensed and the actual metric decimal quantity dispensed, must be billed.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 14.065

Hist.: HR 16-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 22-1991, f. & cert. ef. 5-16-91; HR 23-1991(Temp), f. 6-14-91, cert. ef. 6-17-91; HR 31-1991, f. & cert. ef. 7-16-91; HR 36-1991(Temp), f. 9-16-91, cert. ef. 10-1-91; HR 45-1992, f. & cert. ef. 10-16-91; HR 50-1991(Temp), f. & cert. ef. 10-29-91; HR 1-1992, f. & cert. ef. 1-2-92; HR 13-1992, f. & cert. ef. 6-1-92; HR 21-1992, f. 7-31-92, cert. ef. 8-1-92; HR 31-1992, f. & cert. ef. 10-1-92; HR 34-1992, f. & cert. ef. 12-1-92; HR 4-1993, f. 3-10-93, cert. ef. 3-11-93; HR 7-1993 (Temp), f. & cert. ef. 4-1-93; HR 14-1993, f. & cert. ef. 7-2-93; HR 24-1993, f. & cert. ef. 10-1-93; HR 17-1994, f. & cert. ef. 4-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 43-2000(Temp), f. 12-29-00, cert. ef. 1-1-01 thru 5-1-01; OMAP 3-2001, f. & cert. ef. 3-16-01; OMAP 24-2001(Temp), f. 5-9-01, cert. ef. 5-10-01 thru 11-1-01; OMAP 25-2001(Temp), f. 6-28-01, cert. ef. 7-1-01 thru 12-1-01; OMAP 27-2001(Temp), f. 7-30-01, cert. ef. 8-1-01 thru 1-26-02; OMAP 48-2001(Temp), f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 56-2001(Temp), f. & cert. ef. 11-1-01 thru 4-15-02; OMAP 57-2001(Temp), f. 11-28-01, cert. ef. 12-1-01 thru 4-15-02; OMAP 66-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 4-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; OMAP 16-2002(Temp), f. & cert. ef. 4-12-02 thru 9-1-02; OMAP 20-2002(Temp), f. & cert. ef. 5-15-02 thru 10-1-02; OMAP 34-2002(Temp), f. & cert. ef. 8-14-02 thru 1-15-03; OMAP 67-2002(Temp), f. & cert. ef. 11-1-02 thru 3-15-03; OMAP 6-2003(Temp), f. & cert. ef. 2-14-03 thru 7-1-03; OMAP 38-2003, f. & cert. ef. 5-9-03; OMAP 39-2003(Temp), f. & cert. ef. 5-15-03; OMAP 48-2003, f. & cert. ef. 7-7-03; OMAP 74-2003, f. & cert. ef. 10-1-03; OMAP 5-2004(Temp), f. & cert. ef. 2-4-04 thru 6-15-04; OMAP 24-2004, f. & cert. ef. 3-30-04; OMAP 31-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 42-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 53-2004(Temp), f. & cert. ef. 9-10-04 thru 2-15-05; OMAP 82-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 1-2005(Temp), f. & cert. ef. 1-14-05 thru 6-1-05; OMAP 6-2005, f. 3-1-05, cert. ef. 3-31-05

Adm. Order No.: OMAP 7-2005(Temp)
Filed with Sec. of State: 3-1-2005
Certified to be Effective: 4-1-05 thru 8-1-05
Notice Publication Date:
Rules Amended: 410-121-0157

Subject: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. OMAP temporarily amended rule 410-121-0157 to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. Updates include information from CMS Release #135, dated December 10, 2004.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0157

Participation in the Medicaid Drug Rebate Program

(1) The Oregon Medicaid Pharmaceutical Services Program is a participant in the Centers for Medicare and Medicaid Services (CMS) Medicaid Drug Rebate Program, created by the Omnibus Budget Reconciliation Act (OBRA) of 1990. The Medicaid Drug Rebate Program requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services for States to receive federal funding for outpatient drugs dispensed to Medicaid patients. The drug rebate program is administered by CMS's Center for Medicaid and State Operations (CMSO). Pharmaceutical companies participating in this program have signed agreements with CMS to provide rebates to the Office of Medical Assistance Programs (OMAP) on all their drug products. OMAP will reimburse providers only for outpatient drug products manufactured or labeled by companies participating in this program.

(2) Names and Label Code numbers for participants in the Medicaid Drug Rebate Program are the responsibility of and maintained by CMS. OMAP receives this information from CMS in the form of numbered and dated Releases. OMAP includes in rule by reference, Release #135, dated December 10, 2004 and the OMAP Master Pharmaceutical Manufacturer's Rebate Lists, alphabetical and numeric, by manufacturer. This information is available on the Department of Human Services' website: <http://www.dhs.state.or.us/policy/healthplan/rules/>, and on the CMS website: www.cms.hhs.gov/medicaid/drugs/drughmpg.asp, or by contacting CMS.

(3) OMAP contracts with First Health Services to manage the Medicaid Rebate Dispute Resolution program. Pharmacy providers must verify the accuracy of their Medicaid pharmacy claims with First Health Services within 30 days of request in instances where drug manufacturers dispute their claim information. Verification can be photocopies of drug invoices showing that the billed products were in stock during the time of the date of service.

(4) The actual National Drug Code (NDC) dispensed and the actual metric decimal quantity dispensed, must be billed.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 14.065

Hist.: HR 16-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 22-1991, f. & cert. ef. 5-16-91; HR 23-1991(Temp), f. 6-14-91, cert. ef. 6-17-91; HR 31-1991, f. & cert. ef. 7-16-91; HR 36-1991(Temp), f. 9-16-91, cert. ef. 10-1-91; HR 45-1992, f. & cert. ef. 10-16-91; HR 50-1991(Temp), f. & cert. ef. 10-29-91; HR 1-1992, f. & cert. ef. 1-2-92; HR 13-1992, f. & cert. ef. 6-1-92; HR 21-1992, f. 7-31-92, cert. ef. 8-1-92; HR 31-1992, f. & cert. ef. 10-1-92; HR 34-1992, f. & cert. ef. 12-1-92; HR 4-1993, f. 3-10-93, cert. ef. 3-11-93; HR 7-1993 (Temp), f. & cert. ef. 4-1-93; HR 14-1993, f. & cert. ef. 7-2-93; HR 24-1993, f. & cert. ef. 10-1-93; HR 17-1994, f. & cert. ef. 4-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 43-2000(Temp), f. 12-29-00, cert. ef. 1-1-01 thru 5-1-01; OMAP 3-2001, f. & cert. ef. 3-16-01; OMAP 24-2001(Temp), f. 5-9-01, cert. ef. 5-10-01 thru 11-1-01; OMAP 25-2001(Temp), f. 6-28-01, cert. ef. 7-1-01 thru 12-1-01; OMAP 27-2001(Temp), f. 7-30-01, cert. ef. 8-1-01 thru 1-26-02; OMAP 48-2001(Temp), f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 56-2001(Temp), f. & cert. ef. 11-1-01 thru 4-15-02; OMAP 57-2001(Temp), f. 11-28-01, cert. ef. 12-1-01 thru 4-15-02; OMAP 66-2001(Temp), f. & cert. ef. 1-1-02 thru 5-15-02; OMAP 4-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; OMAP 16-2002(Temp), f. & cert. ef. 4-12-02 thru 9-1-02; OMAP 20-2002(Temp), f. & cert. ef. 5-15-02 thru 10-1-02; OMAP 34-2002(Temp), f. & cert. ef. 8-14-02 thru 1-15-03; OMAP 67-2002(Temp), f. & cert. ef. 11-1-02 thru 3-15-03; OMAP 6-2003(Temp), f. & cert. ef. 2-14-03 thru 7-1-03; OMAP 38-2003, f. & cert. ef. 5-9-03; OMAP 39-2003(Temp), f. & cert. ef. 5-15-03; OMAP 48-2003, f. & cert. ef. 7-7-03; OMAP 74-2003, f. & cert. ef. 10-1-03; OMAP 5-2004(Temp), f. & cert. ef. 2-4-04 thru 6-15-04; OMAP 24-2004, f. & cert. ef. 3-30-04; OMAP 31-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 42-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 53-2004(Temp), f. & cert. ef. 9-10-04 thru 2-15-05; OMAP 82-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 1-2005(Temp), f. & cert. ef. 1-14-05 thru 6-1-05; OMAP 6-2005, f. 3-1-05, cert. ef. 3-31-05; OMAP 7-2005(Temp), f. 3-1-05, cert. ef. 4-1-05 thru 8-1-05

ADMINISTRATIVE RULES

Adm. Order No.: OMAP 8-2005

Filed with Sec. of State: 3-9-2005

Certified to be Effective: 4-1-05

Notice Publication Date: 1-1-05

Rules Adopted: 410-130-0368, 410-130-0610

Rules Amended: 410-130-0160, 410-130-0180, 410-130-0200, 410-130-0220, 410-130-0240, 410-130-0587, 410-130-0680, 410-130-0700

Rules Repealed: 410-130-0010, 410-130-0020, 410-130-0040

Subject: The Medical-Surgical Services program administrative rules govern the Office of Medical Assistance Programs' (OMAP) payment for certain services provided to clients. OMAP permanently adopted two new rules to address telemedicine and to include language regarding anesthesia which was removed from 410-130-0240. OMAP permanently amended rules listed above to make technical changes and clarify policy. OMAP permanently repealed rules listed above to remove billing instructions that are not necessary in rule. This information is found in the Medical-Surgical Supplemental information on OMAP's website.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-130-0160

Codes

(1) ICD-9-CM Diagnosis Codes:

(a) Always use the principal diagnosis code in the first position to the highest degree of specificity. List up to three additional diagnosis codes if the claim includes charges for services that relate to the additional diagnoses. However, it is not necessary to include more than one diagnosis code per procedure code;

(b) Diagnosis codes are required on all billings including those from independent laboratories and portable radiology including nuclear medicine and diagnostic ultrasound providers;

(c) Always supply the ICD-9-CM diagnosis code to ancillary service providers when prescribing services, equipment and supplies.

(2) CPT, and HCPCS Codes:

(a) Use only codes from the current year for Current Procedural Terminology (CPT) and Healthcare Common Procedure Coding System (HCPCS) codes;

(b) Effective January 1, 2005, HIPAA regulations prohibit the use of a grace period for codes deleted from CPT or HCPCS. In the past the grace period was from January 1st through March 31st;

(c) CPT category II (codes with fifth character of "F") and III codes (codes with fifth character "T") are not Medical Assistance Program covered services;

(d) Use the most applicable CPT or HCPCS code. Do not fragment coding when services can be included in a single code (see the "Bundled Services" section of this rule). Do not use both CPT and HCPCS codes for the same procedure. This is considered duplicate billing.

(3) The Medical-Surgical Service rules list the 2005 HCPCS/CPT codes that require authorization, or have limitations. The Health Services Commission's Prioritized List of Health Services (rule 410-141-0520) determines covered services.

(4) For determining the appropriate level of service code for Evaluation and Management services, read the definitions in the CPT and HCPCS codebook. Use the definitions to verify your level of service, especially for office visits. Unless otherwise specified in the Medical-Surgical provider rule, use the guidelines from CPT and HCPCS.

(5) Bundled Services — Reimbursements for some services are "bundled" into the payment for another service (e.g., payment for obtaining a PAP smear is bundled into the payment for the office visit). Bundled services cannot be billed separately to OMAP or the client. The abbreviation "BND" in the code lists in the OMAP Medical-Surgical Services provider rule indicates the procedure is bundled into another one.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; AFS 10-1990, f. 3-30-90, cert. ef. 4-1-90; Renumbered from 461-014-0610; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 2-1992, f. & cert. ef. 1-2-92; HR 8-1992, f. 2-28-92, cert. ef. 3-1-92; HR 23-1992, f. 7-31-92, cert. ef. 8-1-92; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 10-1996, f. 5-31-96, cert. ef. 6-1-96; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 2-2002, f. 2-15-02, cert. ef. 4-1-02; OMAP 23-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05

410-130-0180

Drugs

(1) Not covered services include:

(a) Laetrile;

(b) Home pregnancy kits and products designed to promote fertility;

(c) DMSO, except for instillation into the urinary bladder for symptomatic relief of interstitial cystitis. This service does not require prior authorization;

(d) Infertility drugs;

(e) Sodium hyaluronate and Synvisc (J7317 and J7320).

(2) Drug Administration. Reimbursement is limited to drugs administered by the prescribing practitioner in the office, clinic or home settings. Drugs for self-administration by the client are not billable, EXCEPT contraceptives such as birth control pills, spermicides and patches:

(a) Use an appropriate CPT therapeutic injection code for administration of injections;

(b) Use an appropriate HCPCS code for the specific drug. Do not bill for drugs under code 99070;

(c) When billing unclassified drugs and other drug codes listed below, bill at acquisition cost (purchase price plus postage) and use the following codes:

(A) J1815-J1816;

(B) J3490;

(C) J7699;

(D) J7799;

(E) J8499;

(F) J8999

(G) J9999;

(H) Include the name of the drug, NDC number, and dosage.

(d) Epoetin Alpha (EPO) HCPCS are covered;

(e) Do not bill for local anesthetics. Reimbursement is included in the payment for the tray and/or procedure.

(3) For Not Covered/Bundled services or Prior Authorization Requirements refer to OAR 410-130-0200 Table 130-0200-1 and OAR 410-130-0220 Table 130-0220-1.

(4) Follow criteria outlined in the following:

(a) Billing Requirements — OAR 410-121-0150;

(b) Brand Name Pharmaceuticals — OAR 410-121-0155;

(c) Prior Authorization Procedures — OAR 410-121-0060;

(d) Drugs and Products Requiring Prior Authorization — OAR 410-121-0040;

(e) Drug Use Review — OAR 410-121-0100;

(f) Participation in Medicaid's Prudent Pharmaceutical Purchasing Program — OAR 410-121-0157.

(5) Clozapine Therapy:

(a) Clozapine is covered only for the treatment of clients who have failed therapy with at least two anti-psychotic medications;

(b) Clozapine Supervision is the management and record keeping of Clozapine dispensing as required by the manufacturer of Clozapine:

(A) Providers billing for Clozapine supervision must document all of the following:

(i) Exact date and results of White Blood Counts (WBC), upon initiation of therapy and at recommended intervals per the drug labeling;

(ii) Notations of current dosage and change in dosage;

(iii) Evidence of an evaluation at intervals recommended per the drug labeling requirements approved by the FDA;

(iv) Dates provider sent required information to manufacturer.

(B) Only one provider (either a physician or pharmacist) may bill per week per client;

(C) Limited to five units per 30 days per client;

(D) Use code 90862 with modifier TC to bill for Clozapine supervision.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; AFS 10-1990, f. 3-30-90, cert. ef. 4-1-90; Renumbered from 461-014-0620; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 43-1991, f. & cert. ef. 10-1-91; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 10-1996, f. 5-31-96, cert. ef. 6-1-96; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 2-2002, f. 2-15-02, cert. ef. 4-1-02; OMAP 33-2002, f. & cert. ef. 8-1-02; OMAP 39-2002, f. 9-13-02, cert. ef. 9-15-02; OMAP 52-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05

ADMINISTRATIVE RULES

410-130-0200

Prior Authorization

(1) If the client is covered by a managed care plan, contact the appropriate managed care plan for prior authorization (PA) requirements and instructions for billing the plan.

(2) If the client has both Medicare and Medical Assistance Program coverage, PA is not required from OMAP for services covered by Medicare, except for most transplants.

(3) Kidney and cornea transplants do not require PA unless they are performed out-of-state.

(4) Contact the Office of Medical Assistance Program's (OMAP) Transplant Coordinator for PA for transplants other than kidney and cornea, and requests for non-emergent, non-urgent out-of-state services. Refer to the OMAP Transplant Services rule for further information on transplants and refer to the General Rules for further information concerning out-of-state services.

(5) Services for clients of the Medically Fragile Children's Unit must be authorized by that Unit.

(6) For clients enrolled in the fee-for-service (FFS) High Risk Medical Case Managed program, contact the Case Management Contractor shown on the client's Medical Care ID. See the Medical-Surgical Services Supplemental Information guide for details.

(7) All other procedures listed in the Medical-Surgical Services provider rule with a PA indicator must be prior authorized by the Oregon Medical Professional Review Organization (OMPRO) when performed in any setting. A second opinion may be requested by OMAP or OMPRO before authorization of payment is given for a surgery.

(8) Hospital admissions do not require PA unless the procedure requires PA.

(9) PA is not required for emergent or urgent procedures or services.

(10) Treating and performing practitioners are responsible for obtaining PA.

(11) Refer to **Table 130-0200-1** for all services/procedures requiring prior authorization. **Table 130-0200-1**

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 868, f. 12-30-77, ef. 2-1-78; AFS 65-1980, f. 9-23-80, ef. 10-1-80; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 23-1986, f. 3-19-86, ef. 5-1-86; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; Renumbered from 461-014-0045; AFS 10-1990, f. 3-30-90, cert. ef. 4-1-90; Renumbered from 461-014-0630; HR 25-1990(Temp), f. 8-31-90, cert. ef. 9-1-90; HR 44-1990, f. & cert. ef. 11-30-90; HR 17-1991(Temp), f. 4-12-91, cert. ef. 5-1-91; HR 24-1991, f. & cert. ef. 6-18-91; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05

410-130-0220

Not Covered/Bundled Services

(1) Refer to the Oregon Health Plan Administrative Rules (OAR 410-141-0520) and General Rules (chapter 410, division 120) for coverage of services. Refer to **Table 130-0220-1** for additional information regarding not covered services or for services that are considered by OMAP to be bundled. The following are examples of not covered services:

(a) "After hours" visits during regularly scheduled hours;

(b) Psychotherapy services (covered only through local Mental Health Clinics and Mental Health Organizations);

(c) Room charges (only services and supplies covered);

(d) Routine postoperative visits (included in the payment for the surgery) during 90 days following major surgery (global period) or 10 days following minor surgery;

(e) Services provided at the client's request in a location other than the practitioner's office that are normally provided in the office;

(f) Telephone calls for purposes other than tobacco cessation and maternity case management.

(2) This is not an inclusive list. Specific information is included in the Office of Medical Assistance Programs (OMAP) General Rules, Medical Assistance Benefits: Excluded Services and Limitations (OAR 410-120-1200).

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; AFS 10-1990, f. 3-30-90, cert. ef. 4-1-90; Renumbered from 461-014-0640; HR 14-1991(Temp), f. & cert. ef. 3-7-91; HR 21-1991, f. 4-16-91, cert. ef. 5-1-91; HR 42-1994, f.

12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 16-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 30-1998, f. & cert. ef. 9-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 37-1999, f. & cert. ef. 10-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05

410-130-0240

Medical Services

(1) All medical and surgical services requiring prior authorization (PA) are listed in OAR 410-130-0200 PA **Table 130-0200-1**, and services that are Not Covered/Bundled services are listed in OAR 410-130-0220 Table 130-0220-1. **Table 130-0220-1** only contains clarification regarding some services that are not covered. Refer to the Health Services List of Prioritized Services for additional information regarding not covered services.

(2) Acupuncture may be performed by a physician, a physician's employee-acupuncturist under the physician's supervision, or a licensed acupuncturist, and billed using CPT 97810-97814.

(3) Chiropractic services must be billed using 99202 and 99212 for the diagnostic visits and 98940-98942 for manipulation. Use CPT lab and radiology codes, which most accurately identifies the services performed.

(4) Maternity Care and Delivery:

(a) Use Evaluation and Management codes when providing three or fewer antepartum visits;

(b) For births performed in a clinic or home setting, use CPT codes that most accurately describe the services provided. HCPCS supply code S8415 may be billed in addition to the CPT procedure code. Code S8415 includes all supplies, equipment, staff assistance, birthing suite, newborn screening cards, topical and local anesthetics. Bill medications (except topical and local anesthetics) with HCPCS codes that most accurately describe the medications;

(c) For labor management only, bill 59899 and attach a report;

(d) For multiple births, bill the highest level birth with the appropriate CPT code and the other births under the delivery only code. For example, for total OB with cesarean delivery of twins, bill 59510 for the first delivery and 59514 for the second delivery.

(5) Mental Health and Psychiatric Services:

(a) For Administrative Exams and reports for psychiatric or psychological evaluations, refer to the Administrative Exam rules;

(b) Psychiatrists can be reimbursed by OMAP for symptomatic diagnosis and services, which are somatic (physical) in nature. Contact the local Mental Health Department for covered psychiatric and psychological services;

(c) Mental Health Services — Must be provided by local Mental Health Clinics or a client's Mental Health Organization (MHO). Not payable to private physicians, psychologists, and social workers.

(6) Neonatal Intensive Care Unit (NICU) procedure codes:

(a) Are reimbursed only to neonatologists and pediatric intensivists for services provided to infants when admitted to a Neonatal or Pediatric Intensive Care Unit (NICU/PICU). All other pediatricians must use other CPT codes when billing for services provided to neonates and infants;

(b) Consultations by specialists other than neonatologists and pediatric intensivists are payable in addition to these codes;

(c) Neonatal intensive care codes are not payable for infants on Extracorporeal Membrane Oxygenation (ECMO). Use specific CPT ECMO codes.

(7) Neurology/Neuromuscular — Payment for polysomnographs and multiple sleep latency test (MSLT) are each limited to two in a 12-month period.

(8) Ophthalmology Services — Routine eye exams for the purpose of glasses or contacts are limited to one examination every 24 months for adults. All materials and supplies must be obtained from OMAP's contractor. Refer to the Vision Program Rules for more information.

(9) Special Services and Reports — OMAP will pay for procedure codes 99052 or 99054 only when the service provided is outside the practitioner's usual or scheduled working hours. These services are not payable to emergency room based physicians.

(10) Speech & Hearing:

(a) HCPCS codes V5000-V5299 are limited to speech-language pathologists, audiologists, and hearing aid dealers;

(b) Refer to the Speech and Hearing Program Rules for detailed information;

(c) Payment for hearing aids and speech therapy must be authorized before the service is delivered;

(d) CPT 92593 and 92595 are only covered for children under age 21.

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(11) Massage therapy is covered only when provided with other modalities during the same physical therapy session. Refer to Physical and Occupational Therapy Services administrative rules (chapter 410 division 131) for other restrictions.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 839(Temp), f. & ef. 4-28-77; PWC 849, f. 7-15-77, ef. 8-1-77; PWC 868, f. 12-30-77, ef. 2-1-78; AFS 14-1978(Temp), f. 4-14-78, ef. 4-15-78; AFS 31-1978, f. & ef. 8-1-78; AFS 26-1980, f. 5-21-80, ef. 6-1-80, AFS 56-1980(Temp), f. 8-29-80, ef. 9-1-80; AFS 2-1981, f. 1-9-81, ef. 2-1-81; AFS 36-1981, f. 6-29-81, ef. 7-1-81; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 38-1983, f. & ef. 8-1-83; AFS 57-1983, f. 11-29-83, ef. 1-1-84; AFS 48-1984(Temp), f. 11-30-84, ef. 12-1-84; AFS 29-1985, f. 5-22-85, ef. 5-29-85; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 56-1987, f. 10-29-87, ef. 11-1-87; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; AFS 48-1989, f. & cert. ef. 8-24-89; Renumbered from 461-014-0021 & 461-14-056; AFS 10-1990, f. 3-30-90, cert. ef. 4-1-90; Renumbered from 461-014-0650, 461-014-0690 & 461-014-0700; HR 14-1991(Temp), f. & cert. ef. 3-7-91; HR 18-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; ; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 24-1991, f. & cert. ef. 6-18-91; HR 2-1992, f. & cert. ef. 1-2-92; HR 8-1992, f. 2-28-92, cert. ef. 3-1-92; HR 18-1992, f. & cert. ef. 7-1-92; HR 36-1992, f. & cert. ef. 12-1-92; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 16-1993, f. & cert. ef. 7-2-93; HR 6-1994, f. & cert. ef. 2-1-94; Renumbered from 410-130-0320, 410-130-0340, 410-130-0360 & 410-130-0740; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 10-1996, f. 5-31-96, cert. ef. 6-1-96; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 88-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05

410-130-0368

Anesthesia Services

(1) Anesthesia is not covered for procedures that are below the funding line on the Health Services Commission's Prioritized List of Health Services (see OAR 410-141-0520).

(2) Reimbursement is based on the base units listed in the current American Society of Anesthesiology Relative Value Guide plus one unit per each 15 minutes of anesthesia time, except for anesthesia for neuraxial labor analgesia/anesthesia:

(a) Bill total quantity on one line of the base units plus one unit for each 15 minutes of anesthesia time;

(b) For the last fraction of time under 15 minutes, bill one unit for 8-14 minutes. Do not bill a unit for 1-7 minutes of time.

(3) Anesthesia for neuraxial labor analgesia/anesthesia must be billed with the basic units plus one unit for each 15 minutes of patient contact time (insertion, management of adverse events, delivery, removal) plus one unit hourly:

(a) Bill one unit for the last hour only if the fractional time remaining for the case is 31-59 minutes;

(b) Do not bill an hourly unit for 1-30 minutes of the last hour.

(4) Reimbursement for qualifying circumstances codes 99100-99140 and modifiers P1-P6 is bundled in the payment for codes 00100-01999. Do not add charges for 99100-99140 and modifiers P1-P6 in charges for 00100-01999.

(5) A valid consent form is required for all hysterectomies and sterilizations.

(6) If prior authorization (PA) was not obtained on a procedure that requires PA, then the anesthesia services may not be paid. Refer to OAR 410-130-0200 PA Table 130-0200-1.

(7) Anesthesia services are not payable to the provider performing the surgical procedure except for conscious sedation.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05

410-130-0587

Family Planning Clinic Services

(1) This rule is to be used only by family planning clinics.

(2) Family planning clinics are governmental agencies that receive Title X funding from the state for family planning (FP) services and non-governmental providers who have contractual agreements approved by the Office of Family Health to provide family planning services.

(3) Family planning clinics will be reimbursed an encounter rate only for all FP services where the primary purpose of the visit is for family planning.

(4) Bill HCPCS code T1015 "Clinic visit/encounter, all-inclusive; family planning" for all encounters where the primary purpose of the visit is contraceptive in nature:

(a) This encounter code includes the visit and any procedure or service performed during that visit including:

(A) Annual family planning exams;

(B) Family planning counseling;

(C) Insertions and removals of implants and IUDs;

(D) Diaphragm fittings;

(E) Dispensing of contraceptive supplies and contraceptive medications;

(F) Contraceptive injections.

(b) Do not bill procedures, such as IUD insertions, diaphragm fittings or injections, with CPT or HCPCS codes;

(c) Bill only one encounter per date of service;

(d) Reimbursement for educational materials is included in T1015. Educational materials are not billable separately.

(5) Reimbursement for T1015 does not include payment for FP supplies and medications:

(a) Bill contraceptive supplies and medications separately using HCPCS codes. Where there are no specific HCPCS codes, use an appropriate unspecified HCPCS code and bill at acquisition cost:

(A) Bill spermicide code A4269 per tube;

(B) Bill contraceptive pills code S4993 per monthly packet;

(C) Bill emergency contraception with code S4993 and bill per packet.

(b) Add modifier FP after all codes billed for contraceptive services, supplies and medications;

(c) Non-contraceptive medications are not billable under this program.

(6) Reimbursement for T1015 does not include laboratory tests:

(a) Clinics and providers who perform lab tests in their clinics and are CLIA certified to perform those tests may bill CPT and HCPCS lab codes in addition to T1015;

(b) Add modifier FP after lab codes to indicate that the lab was performed during a FP encounter;

(c) Labs sent to outside laboratories, such as PAP smears, can be billed only by the performing laboratory.

(7) Encounters where the primary purpose of the visit is not contraceptive in nature, use appropriate CPT codes and do not add modifier FP.

(8) When billing for services provided to clients enrolled in a Managed Care Organization, mark the family planning Box 24 H on the CMS-1500 billing form.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 78-2003, f. & cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05

410-130-0610

Telemedicine

(1) For the purposes of this rule, telemedicine is the real time exchange of information for diagnosing and treating medical conditions. The telemedicine technology is an audio/video connection linking a medical practitioner in one locality with a client in another locality.

(2) Coverage for telemedicine:

(a) Telemedicine is covered only for synchronous (live two-way interactive) video transmission which permits real time communications between a medical practitioner located in a distant site and the client being evaluated and located in the originating site;

(b) The evaluating practitioner must be licensed to practice medicine within the state of Oregon or within the contiguous area of Oregon and must be enrolled as an OMAP provider.

(3) Billing requirements:

(a) Only the transmission site (where the patient is located) may bill for the transmission:

(A) Bill the transmission with Q3014;

(B) The referring practitioner may bill an E/M code only if a separately identifiable visit is performed. The visit must meet all of the criteria of the E/M code billed.

(b) The evaluating practitioner at the distant site may bill for the evaluation, but not for the transmission (Q3014):

(A) Bill the most appropriate E/M code for the evaluation;

(B) Add modifier GT to the E/M code to designate that the evaluation was made by a synchronous (live and interactive) transmission.

(4) Services not covered:

(a) Asynchronous (store and forward later) telecommunications;

(b) Other forms of telecommunications, such as telephone calls, images transmitted via facsimile machines and electronic mail.

(5) The referring provider is not required to be present with the client at the originating site.

Stat. Auth.: ORS 409

ADMINISTRATIVE RULES

Stats. Implemented: ORS 414.065
Hist.: OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05

410-130-0680

Laboratory and Radiology

(1) All medical and surgical services requiring prior authorization (PA) are listed in OAR 410-130-0200 PA **Table 130-0200-1** and services that are Not Covered/Bundled are listed in OAR 410-130-0220 **Table 130-0220-1**.

(2) Payment for newborn screening kits and collection and handling for newborn screening (NBS) tests performed by the Oregon State Public Health Laboratory (OSPHL) is considered bundled into the delivery fee. Replacement of lost NBS kits may be billed with code S3620 with modifier TC if the loss is documented in the client's medical record. Newborn screening confirmation tests performed by reference laboratories at the request of the OSPHL shall be reimbursed only to the OSPHL.

(3) Transplant lab codes are covered only if the transplant is covered and if the transplant service has been authorized.

(4) All lab tests must be specifically ordered by, or under the direction of licensed medical practitioners within the scope of their license.

(5) If a lab sends a specimen to a reference lab for additional testing, the reference lab may not bill for the same tests as provided by the referring lab.

(6) The claim must indicate the date of the specimen collection as the date of service (DOS) regardless of the actual date the test was performed.

(7) A provider who sends a specimen to another provider for testing may bill the Office of Medical Assistance Programs (OMAP) only for drawing a blood sample venipuncture or capillary puncture or collecting a urine sample by catheterization:

(a) Venipuncture or capillary puncture and urinary catheterization are payable only once per day regardless of the frequency performed;

(b) Collection and/or handling of other specimens (such as PAP or other smears, voided urine samples, or stool specimens) are considered bundled into the exam and/or lab procedures and are not payable in addition to the laboratory test.

(8) Pass-along charges from the performing laboratory to another laboratory, medical practitioner, or specialized clinics do not qualify for payment and are not to be billed to OMAP.

(9) Charges for tests performed by independent clinical laboratories may only be billed by and paid to the performing provider or a designated billing agent.

(10) Laboratory Certification — Laboratory services are reimbursable only to facilities with a current, valid Oregon State clinical laboratory license issued by the Oregon Health Division or to laboratories outside of Oregon which are certified by the Centers for Medicare and Medicaid Services (CMS) and meets the requirements of the Clinical Laboratory Improvement Amendments (CLIA) and the provider has notified OMAP of the assigned ten-digit CLIA number. Payment is limited to the level of testing authorized by the state license or CLIA certificate at the time of test performance.

(11) Organ Panels:

(a) OMAP will only reimburse panels as defined by the CPT codes for the year the laboratory service was provided. Tests within a panel may not be billed individually even when ordered separately. The same panel may be billed only once per day per client;

(b) Payment will be made at the panel maximum allowable rate if two or more tests within the panel are billed separately and the total reimbursement rate of the combined codes exceeds the panel rate even if all the tests listed in the panel are not ordered or performed.

(12) CLIA requires all entities that perform even one test, including waived tests on... "materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings" to meet certain Federal requirements. If an entity performs tests for these purposes, it is considered under CLIA to be a laboratory.

(13) Radiology:

(a) Provision of diagnostic and therapeutic radionuclide(s), HCPCS A9500-A9699, is payable only when used in conjunction with diagnostic nuclear medicine procedures (CPT codes 78000 through 78999) or radiation therapy and radiopharmaceutical procedures (CPT codes 77401-77799 and 79000-79999);

(b) Bill routine screening mammography under CPT code 76092;

(c) HCPCS codes R0070 through R0076 are covered.

(14) Contrast and diagnostic-imaging agents — Reimbursement is bundled in the radiology procedure except for low osmolar contrast mate-

rials (LOCM). Supply of LOCM (A4644-A4646) may be billed in addition to the radiology procedure only when the following criteria are met:

(a) Prior adverse reaction to contrast material, with the exception of a sensation of heat, flushing or a single episode of nausea or vomiting;

(b) History of asthma or significant allergies;

(c) Significant cardiac dysfunction including recent or imminent cardiac decompensation, severe arrhythmia, unstable angina pectoris, recent myocardial infarction or pulmonary hypertension;

(d) Decrease in renal function;

(e) Diabetes;

(f) Dysproteinemia;

(g) Severe dehydration;

(h) Altered blood brain barrier (i.e., brain tumor, subarachnoid hemorrhage);

(i) Sickle cell disease, or;

(j) Generalized severe debilitation.

(15) X-ray and EKG interpretations in the emergency room:

(a) OMAP pays for only one interpretation of an x-ray or EKG furnished to an emergency room patient, and that is for the interpretation and report that directly contributed to the diagnosis and treatment of the patient;

(b) A second interpretation of an x-ray or EKG is considered to be for quality control purposes only and is not reimbursable;

(c) Payment will be made for a second interpretation only under unusual circumstances, such as a questionable finding for which the physician performing the initial interpretation believes another physician's expertise is needed.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 57-1983, f. 11-29-83, ef. 1-1-84; AFS 48-1984(Temp), f. 11-30-84, ef. 12-1-84; AFS 29-1985, f. 5-22-85, ef. 5-29-85; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 56-1987, f. 10-29-87, ef. 11-1-87; Renumbered from 461-014-0056; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; AFS 10-1990, f. 3-30-90, cert. ef. 4-1-90; Renumbered from 461-014-0800; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 43-1991, f. & cert. ef. 10-1-91; HR 8-1992, f. 2-28-92, cert. ef. 3-1-92; HR 27-1992(Temp), f. & cert. ef. 9-1-92; HR 33-1992, f. 10-30-92, cert. ef. 11-1-92; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 10-1996, f. 5-31-96, cert. ef. 6-1-96; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 15-1998, f. & cert. ef. 5-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 51-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05

410-130-0700

HCPCS Supplies and DME

(1) Use appropriate HCPCS codes to bill all supplies and DME.

(2) For items that do not have specific HCPCS codes:

(a) Use unlisted HCPCS code;

(b) Bill at acquisition cost, purchase price plus postage.

(3) CPT code 99070 is no longer billable for supplies and materials.

Use HCPCS codes.

(4) Use S3620 with modifier TC for lost newborn screening (NBS) kits.

(5) Reimbursement for office surgical suites and office equipment is bundled in the surgical procedures.

(6) Contraceptive Supplies — Refer to OAR 410-130-0585.

(7) A4000-A9999:

(a) All "A" codes listed in Table 130-0700-1 are covered under this program;

(b) All "A" codes not listed in Table 130-0700-1 must be referred to a Durable Medical Equipment (DME) provider;

(c) Do not use A4570, A4580 and A4590 for splint and cast materials.

Use codes Q4001-Q4051;

(d) A9150-A9999 (administrative, investigational, and miscellaneous) are not covered, except for A9500-A9699. Refer to OAR 410-130-0680.

(8) B4000-B9999:

(a) HCPCS codes B4034-B4036 and B4150-B9999 are not covered for medical-surgical providers;

(b) Refer these services to home enteral/parenteral providers.

(9) C1000-C9999 are not covered.

(10) E0100-E1799: Only the following DME HCPCS codes are covered for medical-surgical providers when provided in an office setting:

(a) E0100-E0116;

(b) E0602;

(c) E0191;

(d) E1399;

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(e) Refer all other items with "E" series HCPCS codes to DME providers.

(11) J0000-J9999 HCPCS codes — Refer to OAR 410-130-0180 for coverage of drugs.

(12) K0000-K9999 HCPCS codes — Refer all items with "K" series to DME providers.

(13) L0000-L9999 Refer to the DME program Administrative rules for coverage criteria for orthotics and prosthetics; Refer to Table 130-0220-1 for a list of "L" codes that are not covered;

(c) Reimbursement for orthotics is a global package, which includes:

- (A) Measurements;
- (B) Moldings;
- (C) Orthotic items;
- (D) Adjustments;
- (E) Fittings;
- (F) Casting and impression materials.

(d) Evaluation and Management codes are covered only for the diagnostic visit where the medical appropriateness for the orthotic is determined and for follow-up visits unrelated to the fitting of the orthotic.

(14) Refer to Table 130-0700-1 for supplies and DME covered in the office setting.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 57-1983, f. 11-29-83, ef. 1-1-84; AFS 48-1984(Temp), f. 11-3084, ef. 12-1-84; AFS 29-1985, f. 5-22-85, ef. 5-29-85; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 56-1987, f. 10-29-87, ef. 11-1-87; Renumbered from 461-014-0056; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; AFS 10-1990, f. 3-30-90, cert. ef. 4-1-90; Renumbered from 461-014-0830; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 4-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 2-2002, f. 2-15-02, cert. ef. 4-1-02; OMAP 51-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05

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Rules Amended: 410-121-0021, 410-121-0135, 410-121-0150, 410-121-0185, 410-121-0190

Rules Repealed: 410-141-0065

Subject: The Pharmaceutical Services program Administrative Rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. OMAP permanently amended 410-121-0021 to clarify policy of authorized pharmacy providers for pharmaceutical prescription dispensing, 410-121-0135 to consolidate the pharmacy management program requirements, 410-121-0150 to clarify billing requirements for providers who have prescription writing authority, 410-121-0185 to correct billing language only, 410-121-0190 to update and correct a procedure code. OAR 410-141-0065 is repealed and text from this rule is consolidated with text in 410-121-0135.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0021

Organizations Authorized to Provide Pharmaceutical Prescription Services

(1) Pharmacies, and Medicare certified independent rural health clinics providing urgent medical services for clients as defined in ORS 414.324(6), may provide drug prescription services for fee-for-service OMAP clients and receive reimbursement from OMAP by complying with all the following requirements:

- (a) Comply with all applicable Federal and State statutes, regulations and rules;
 - (b) Meet all current licensing and regulatory requirements;
 - (c) Be enrolled as a pharmacy provider with OMAP;
 - (d) Pharmacies must have a current National Association of the Board of Pharmacy (NABP) number to bill OMAP;
 - (e) Medicare certified independent rural health clinics must have a pharmacist, physician, or nurse practitioner, licensed to dispense and bill drug prescriptions; and
 - (f) Comply with OMAP pharmacy billing requirements.
- (2) Refer to OAR 410-120-1260 for enrollment details.

Statutory Authority: ORS 409

Statutes Implemented: ORS 414.065

Hist.: OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 41-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05

410-121-0135

Pharmacy Management Program Requirements

(1) The Pharmacy Management Program requires most fee-for-service clients to be enrolled in one pharmacy to receive their prescription drugs.

(2) The name and phone number of the pharmacy the client is required to use will be on the OMAP Medical Care ID. OMAP will only reimburse the pharmacy listed on the OMAP Medical Care ID.

(3) When no pharmacy is listed on the OMAP Medical Care ID, the client may have their prescriptions filled by any pharmacy that has an OMAP provider number.

(4) Enrollment of an Oregon Health Plan (OHP) Client in a Pharmacy Management Program pharmacy shall be mandatory unless the OHP Client:

- (a) Is a Prepaid Health Plan (PHP) OMAP member;
- (b) Has Medicare drug coverage in addition to OHP fee-for-service and no other third party pharmacy insurance coverage;
- (c) Is an American Indian or Alaska Native with proof of Indian heritage;

(d) Is a child in the care and custody of the Department of Human Services;

(e) Is an inpatient or resident in a hospital, nursing facility, or other medical institution.

(5) Pharmacy Management Program clients may change their enrolled pharmacy if they:

- (a) Move out of area;
- (b) Are reapplying for OHP benefits; or
- (c) Are denied access to pharmacy services by their selected pharmacy.

(6) Pharmacy Management Program clients may receive drugs from a different pharmacy if:

- (a) The client has an urgent need to fill a prescription and the enrolled pharmacy is not available; or
- (b) The enrolled pharmacy does not have the prescribed drug in stock; or

(c) The client is out of the area (more than 50 miles) of their enrolled pharmacy;

(d) The client is using mail order home delivery in addition to their enrolled pharmacy.

(7) Call the Pharmacy Benefits Administrator Point of Sale Technical Help Desk for authorization to fill a prescription in the situations described in (5)(a-c) above.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 26-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05

410-121-0150

Billing Requirements

(1) When billing the Office of Medical Assistance Programs (OMAP) for pharmaceuticals, the provider must not bill in excess of the usual and customary charge to the general public.

(2) The National Drug Code (NDC), as it appears on the package from which the prescribed medications are dispensed, must be indicated.

(3) Actual metric decimal quantity dispensed, must be billed.

(4) The provider must accurately furnish all information required on the 5.1 Universal Claims Form if submitting paper claim.

(5) The prescribing practitioner's Medicaid Provider Identification (ID) Number is mandatory on all fee-for-service client drug prescription claims. Claims will deny for a missing or invalid prescriber Medicaid Provider ID Number. Exceptions to this include, but are not limited to, the following:

(a) A miscellaneous Medicaid provider number – 999999, may be used for:

- (A) Out-of-state prescribing practitioners;
- (B) Oregon inactive Medicaid Providers;

(b) Prescribing practitioners who do not have a Medicaid Provider ID Number for billing, but who prescribe for fee-for-service prescriptions for clients under prepaid health plans (PHP), long-term care or other capitated contracts are to be identified with the:

(A) Non-billing Provider ID Number assigned for prescription writing only; or

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(B) Clinic or facility Medicaid Provider ID Number until an individual Non-billing Provider ID Number is obtained;

(C) The supervising physician's Provider ID Number when billing for prescriptions written by the physician assistant, physician students, physician interns, or medical professionals who have prescription writing authority.

(c) A miscellaneous Medicaid Provider ID Number — 999999 may not be used for psychotropic prescriptions for children under the age of six.

(6) When clients have private insurance, providers are required to bill the private insurance as primary and OMAP as secondary.

(7) When clients have Medicare prescription drug coverage, providers are required to bill Medicare as primary and OMAP as secondary.

(8) Billing for Death With Dignity services – Death With Dignity:

(a) Claims for Death With Dignity services cannot be billed through Point-of-Sale;

(b) Services must be billed directly to OMAP, even if the client is in a PHP;

(c) Prescriptions must be billed on a 5.1 Universal Claims Form paper claim form using an NDC number;

(d) Claims must be submitted on paper billing forms to OMAP at PO Box 992, Salem, Oregon 97308-0992.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 15-1987, f. 3-31-87, f. 4-1-87; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; Renumbered from 461-016-0093; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; Renumbered from 461-016-0240; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; OMAP 44-1998(Temp), f. 12-1-98, cert. ef. 12-1-98 thru 5-1-99; OMAP 11-1999(Temp), f. & cert. ef. 4-1-99 thru 9-1-99; OMAP 25-1999, f. & cert. ef. 6-4-99; OMAP 5-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 7-2002, f. & cert. ef. 4-1-02; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05

410-121-0185

Pharmacy Based Immunization Delivery

(1) A pharmacist may administer vaccines to persons who are over the age of eighteen as provided by ORS 689.205 and The Board of Pharmacy Administrative rule 855-041-0500.

(2) When billing for vaccines administration, use either the CMS-1500 or the Point Of Sale claims processing system:

(a) When using the CMS-1500 billing form: (A) Use the appropriate CPT-code (90471 and 90472) for the administration plus the appropriate vaccine code(s) 90476-90749:

(B) An ICD-9 diagnosis must be shown in field 21 of the CMS-1500, and;

(C) The diagnosis code must be shown to the highest degree of specificity.

(b) When using the Point-of-Sale system, use the National Drug Code (NDC), as it appears on the package from which the prescribed medications are dispensed. The administration fee for this service will be equivalent to those under 90471-90472.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 7-2002, f. & cert. ef. 4-1-02; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05

410-121-0190

Clozapine Therapy

(1) Clozapine is covered only for the treatment of clients who have failed therapy with at least two anti-psychotic medications. Clozapine Supervision is the management and record keeping of clozapine dispensings as required by the manufacturer of clozapine.

(2) Clozapine supervision:

(a) Pharmacists are to bill for Clozapine Supervision by using code 90862, adding TC modifier.

(b) Providers billing for clozapine supervision must document all of the following:

(A) Exact date and results of White Blood Counts (WBCs), upon initiation of therapy and at recommended intervals per the drug labeling;

(B) Notations of current dosage and change in dosage;

(C) Evidence of an evaluation at intervals recommended per the drug labeling requirements approved by the FDA;

(D) Dates provider sent required information to manufacturer.

(E) Only one provider, either pharmacist or physician, may bill per week per client;

(F) Limited to five units per 30 days per client;

(G) An ICD-9 diagnosis must be shown in Field 21 of the CMS-1500. The diagnosis code must be shown to the 5th digit on the CMS-1500 and OMAP 505.

(3) Drug Products — The information required on the 5.1 Universal Claim Form must be included in the billing. The actual drug product may be billed electronically or submitted on the 5.1 Universal Claim Form;

(4) Venipuncture — If the pharmacy performs venipuncture, bill for that procedure on a CMS-1500. If the client has Medicare coverage, use the OMAP 505. Use Type of Service "S" and Procedure Code36415.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 17-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 45-2002, f. & cert. ef. 10-1-02; OMAP 20-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05

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Adm. Order No.: OMAP 10-2005

Filed with Sec. of State: 3-9-2005

Certified to be Effective: 4-1-05

Notice Publication Date: 1-1-05

Rules Amended: 410-120-0000, 410-120-1200, 410-120-1260, 410-120-1280, 410-120-1320

Subject: The General Rules program administrative rules govern the Office of Medical Assistance Programs' payment for services rendered to clients. OMAP amended as follows: 410-120-0000, to add definitions for diagnosis related group, hospice, inpatient, and outpatient; 410-120-1200, to include exclusion of self help programs; 410-120-1260, to clarify enrollment responsibilities for billing providers, performing providers, locus tenens, reciprocal billing arrangements, required reporting updates, and coordination with Electronic Data Interchange (EDI) rules required by Health Insurance Portability and Accountability Act (HIPAA); 410-120-1280, to clarify billing practices affected by HIPAA and EDI requirements, and OMAP's adherence to national coding requirements; and, 410-120-1320, to clarify that a payment authorization may not exceed the date a client's benefit package no longer covers the service. Also, OMAP made housekeeping corrections as needed.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-0000

Acronyms and Definitions

(1) AAA — Area Agency on Aging.

(2) Acupuncturist — A person licensed to practice acupuncture by the relevant State Licensing Board.

(3) Acupuncture Services — Services provided by a licensed Acupuncturist within the scope of practice as defined under state law.

(4) Acute — A condition, diagnosis or illness with a sudden onset and which is of short duration.

(5) Acquisition Cost — Unless specified otherwise in individual program administrative rules, the net invoice price of the item, supply or equipment, plus any shipping and/or postage for the item.

(6) Adequate Record Keeping — Documentation that supports the level of service billed. See 410-120-1360, Requirements for Financial, Clinical, and Other Records, and the individual provider rules.

(7) Administrative Medical Examinations and Reports — Examinations, evaluations, and reports, including copies of medical records, requested on the OMAP 729 form through the local Department of Human Services (DHS) branch office or requested or approved by OMAP to establish client eligibility for a medical assistance program or for case-work planning.

(8) All Inclusive Rate — The nursing facility rate established for a facility. This rate includes all services, supplies, drugs and equipment as described in OAR 411-070-0085, and in the Pharmaceutical Services and the Home Enteral/Parenteral Nutrition and IV Services provider rules, except as specified in OAR 410-120-1340, Payment.

(9) Ambulance — A specially equipped and licensed vehicle for transporting sick or injured persons which meets the licensing standards of DHS or the licensing standards of the state in which the provider is located.

(10) Ambulatory Surgical Center (ASC) — A facility licensed as an ASC by DHS.

(11) American Indian/Alaska Native (AI/AN) — A member of a federally recognized Indian tribe, band or group, an Eskimo or Aleut or other

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Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601, or a person who is considered by the Secretary of the Interior to be an Indian for any purpose.

(12) American Indian/Alaska Native clinic — Clinics recognized under Indian Health Services (IHS) law or by the Memorandum of Agreement between IHS and the Centers for Medicare and Medicaid (CMS).

(13) Ancillary Services — Services supportive of or necessary to the provision of a primary service (e.g., anesthesiology is an ancillary service necessary for a surgical procedure).

(14) Anesthesia Services — Administration of anesthetic agents to cause loss of sensation to the body or body part.

(15) Audiologist — A person licensed to practice audiology by the State Board of Examiners for Speech Pathology and Audiology.

(16) Audiology — The application of principles, methods and procedures of measurement, testing, appraisal, prediction, consultation, counseling and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory training, speech reading and hearing aid evaluation, or other behavior related to hearing impairment.

(17) Automated Information System (AIS) — A computer system that provides information on clients' current eligibility status from the Office of Medical Assistance Programs (OMAP).

(18) Benefit Package — The package of covered health care services for which the client is eligible.

(19) Billing Provider (BP) — A person, agent, business, corporation, clinic, group, institution, or other entity submits claims to and/or receives payment from OMAP on behalf of a performing provider and has been delegated the authority to obligate or act on behalf of the performing provider.

(20) Buying Up — The practice of obtaining client payment in addition to the OMAP or managed care plan payment to obtain a non-covered service or item. (See 410-120-1350 Buying Up)

(21) By Report (BR) — Services designated, as BR require operative or clinical and other pertinent information to be submitted with the billing as a basis for payment determination. This information must include an adequate description of the nature, and extent of need for the procedure. Information such as complexity of symptoms, final diagnosis, pertinent physical findings, diagnostic and therapeutic procedures, concurrent problems, and follow-up care will facilitate evaluation.

(22) Children, Adults and Families (CAF) — An office within DHS, responsible for administering self-sufficiency and child-protective programs;

(23) Children's Health Insurance Program (CHIP) — A federal and state funded portion of the Oregon Health Plan established by Title XXI of the Social Security Act and administered by OMAP.

(24) Chiropractor — A person licensed to practice chiropractic by the relevant State Licensing Board.

(25) Chiropractic Services — Services provided by a licensed Chiropractor within the scope of practice, as defined under State law and Federal regulation.

(26) Citizen/Alien-Waived Emergency Medical (CAWEM) — Aliens granted lawful temporary resident status, or lawful permanent resident status under the Immigration and Nationality Act, are eligible only for emergency services and limited service for pregnant women. Emergency Services for CAWEM is defined in OAR 410-120-1200 (3)(e).

(27) Claimant — a person who has requested a hearing.

(28) Clinical Social Worker — A person licensed to practice clinical social work pursuant to State law.

(29) Contiguous Area — The area up to 75 miles outside the border of the State of Oregon.

(30) Contiguous Area Provider — A provider practicing in a contiguous area.

(31) Copayments — The portion of a claim or medical, dental or pharmaceutical expense that a client must pay out of their own pocket to a provider or a facility for each service. It is usually a fixed amount that is paid at the time service is rendered. (See 410-120-1230 Client Copayment)

(32) Cost Effective — The lowest cost health care service or item which, in the judgment of OMAP staff or its contracted agencies, meets the medical needs of the client.

(33) Current Dental Terminology (CDT) — A listing of descriptive terms identifying dental procedure codes used by the American Dental Association.

(34) Current Procedural Terminology (CPT) — The Physicians' Current Procedural Terminology is a listing of descriptive terms and iden-

tifying codes for reporting medical services and procedures performed by physicians and other health care providers.

(35) Date of Receipt of a Claim — The date on which OMAP receives a claim, as indicated by the Internal Control Number (ICN) assigned to a claim. Date of Receipt is shown as the Julian date in the 5th through 7th position of the Internal Control Number (ICN).

(36) Date of Service — The date on which the client receives medical services or items, unless otherwise specified in the appropriate provider rules. For items that are mailed or shipped by the provider, the date of service is the date on which the order was received, the date on which the item was fabricated, or the date on which the item was mailed or shipped.

(37) Dental Emergency Services — Dental services provided for severe tooth pain, unusual swelling of the face or gums, or an avulsed tooth.

(38) Dental Services — Services provided within the scope of practice as defined under State law by or under the supervision of a dentist.

(39) Dentist — A person licensed to practice dentistry pursuant to State law of the state in which he/she practices dentistry, or a person licensed to practice dentistry pursuant to Federal law for the purpose of practicing dentistry as an employee of the Federal government.

(40) Denturist — A person licensed to practice denture technology pursuant to State law.

(41) Denturist Services — Services provided, within the scope of practice as defined under State law, by or under the personal supervision of a denturist.

(42) Dental Hygienist — A person licensed to practice hygiene under the direction of a licensed professional within the scope of practice pursuant to State law.

(43) Dental Hygienist with Limited Access Certification (LAC) — A person licensed to practice dental hygiene with LAC pursuant to State law.

(44) Department — DHS or its Office of Medical Assistance Programs.

(45) Department of Human Services (DHS) — The Oregon Department of Human Services or any of its programs or offices.

(46) Department Representative — A person who represents the Department in the hearing and presents the Department's position.

(47) Diagnosis Code — As identified in the ICD-CM, the primary diagnosis code is shown in all billing claims, unless specifically excluded in individual provider rule(s). Where they exist, diagnosis codes shall be shown to the degree of specificity outlined in OAR 410-120-1280, Billing.

(48) Diagnosis Related Group (DRG) — a system of classification of diagnoses and procedures based on the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM).

(49) Durable Medical Equipment and Supplies (DME) — Equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose. Examples include wheelchairs, respirators, crutches and custom built orthopedic braces. Medical supplies are non-reusable items used in the treatment of illness or injury. Examples of medical supplies include diapers, syringes, gauze bandages and tubing.

(50) Electronic Eligibility Verification Service (EEVS) — Vendors of medical assistance eligibility information that have met the legal and technical specifications of OMAP in order to offer eligibility information to enrolled providers of OMAP.

(51) Emergency Room — The part of a licensed hospital facility open 24 hours a day to provide care for anyone in need of emergency treatment.

(52) Emergency Medical Services — (This definition does not apply to clients with CAWEM benefit package. CAWEM emergency services are governed by OAR 410-120-1210 (3)(e)(B)). The health care and services provided for diagnosis and treatment of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of both the woman and her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. If an emergency medical condition is found to exist, emergency medical services necessary to stabilize the condition must be provided. This includes all treatment that may be necessary to assure, within reasonable medical probability, that no material deterioration of the patient's condition is likely to result from, or occur during, discharge of the member or transfer of the member to another facility.

(53) Emergency Transportation — Transportation necessary when a sudden, unexpected occurrence creates a medical crisis requiring immediate transportation to a site, usually a hospital, where appropriate emergency medical care is available.

(54) Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT; also Medichex) — The Title XIX program of Early and Periodic

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Screening, Diagnosis and Treatment Services for eligible clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required medically appropriate health care services and to help OMAP clients and their parents or guardians effectively use them.

(55) False Claim — A claim that a provider knowingly submits or causes to be submitted that contains inaccurate or misleading information, and such inaccurate or misleading information would result, or has resulted, in an overpayment.

(56) Family Planning — Services for clients of child bearing age (including minors who can be considered to be sexually active) who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(57) Federally Qualified Health Center (FQHC) — A federal designation for a medical entity which receives grants under Section 329, 330, or 340 of the Public Health Service Act; or a facility designated as a FQHC by the Centers for Medicare and Medicaid upon recommendation of the U.S. Public Health Service.

(58) Fee-for-Service Provider — A medical provider who is not reimbursed under the terms of an OMAP contract with a Prepaid Health Plan. A medical provider participating in a Prepaid Health Plan may be considered a Fee-for-Service provider when treating clients who are not enrolled in a Prepaid Health Plan.

(59) General Assistance (GA) — Medical Assistance administered and funded 100% with State of Oregon funds through the Oregon Health Plan.

(60) Healthcare Common Procedure Coding System (HCPCS) — a method for reporting health care professional services, procedures, and supplies. HCPCS consists of the Level I — American Medical Association's Physician's Current Procedural Terminology (CPT), Level II — National codes, and Level III — Local codes. OMAP uses HCPCS codes; however, OMAP uses Current Dental Terminology (CDT) codes for the reporting of dental care services and procedures.

(61) Health Maintenance Organization (HMO) — A public or private health care organization which is a federally qualified HMO under Section 1310 of the U.S. Public Health Services Act. HMOs provide health care services on a capitated, contractual basis.

(62) Hearing Aid Dealer — A person licensed by the Board of Hearing Aid Dealers to sell, lease or rent hearing aids in conjunction with the evaluation or measurement of human hearing and the recommendation, selection, or adaptation of hearing aids.

(63) Home Enteral Nutrition — Services provided in the client's place of residence to an individual who requires nutrition supplied by tube into the gastrointestinal tract, as described in the Home Enteral/Parenteral Nutrition and IV Services provider rules.

(64) Home Health Agency — A public or private agency or organization which has been certified by Medicare as a Medicare Home Health Agency and which is licensed by DHS as a Home Health Agency in Oregon, and meets the surety bond and capitalization requirements as outlined in the Balanced Budget Act (BBA) of 1997.

(65) Home Health Services — Part-time or intermittent skilled nursing services, other therapeutic services (physical therapy, occupational therapy, speech therapy), and home health aide services made available on a visiting basis in a place of residence used as the client's home.

(66) Home Intravenous (IV) Services — Services provided in the client's place of residence to an individual who requires that medication (antibiotics, analgesics, chemotherapy, hydrational fluids, or other intravenous medications) be administered intravenously as described in the Home Enteral/Parenteral Nutrition and IV Services rules.

(67) Home Parenteral Nutrition — Services provided in the client's residence to an individual who is unable to absorb nutrients via the gastrointestinal tract, or for other medical reasons, requires nutrition be supplied parenterally as described in the Home Enteral/Parenteral Nutrition and IV Services rules.

(68) Hospice — a public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare, accredited by the Oregon Hospice Association, and is listed in the Hospice Program Registry.

(69) Hospital — A facility licensed by the Office of Public Health Systems as a general hospital which meets requirements for participation in the OHP under Title XVIII of the Social Security Act. Facilities licensed as Special Inpatient Care Facilities under the Office of Public Health System's definition of hospital are not considered hospitals by OMAP for reimbursement purposes; however, effective April 1, 2000, OMAP will reimburse a Special Inpatient Care Facility if the Centers for Medicare and Medicaid has certified the facility for participation in the Medicare

Program as a Hospital. Out-of-state hospitals will be considered Hospitals for reimbursement purposes if they are licensed as an acute care or general hospital by the appropriate licensing authority within that state, and if they are enrolled as a provider of hospital services with the Medicaid agency within that state.

(70) Hospital-Based Professional Services — Professional services provided by licensed practitioners or staff based on a contractual or employee/employer relationship and reported as a cost on the Hospital Statement of Reasonable Cost report for Medicare and the Calculation of Reasonable Cost (OMAP 42) report for the Office of Medical Assistance Programs.

(71) Hospital Laboratory — A laboratory providing professional technical laboratory services as outlined under laboratory services, in a hospital setting, as either an inpatient or outpatient hospital service whose costs are reported on the Hospital's cost report to Medicare and to OMAP.

(72) ICD-9-CM — The ninth revision of the International Classification of Diseases Clinical Modification, including volumes 1, 2, and 3, as revised annually.

(73) Indian Health Program — Any Indian Health Service facility, any Federally recognized Tribe or Tribal organization, or any Federally Qualified Health Clinic (FQHC) with a 638 designation.

(74) Individual Adjustment Request — Form OMAP 1036 used to resolve an incorrect payment on a previously paid claim, including underpayments or overpayments.

(75) Inpatient — a hospital patient who is not an Outpatient.

(76) Inpatient Hospital Services — Services that are furnished in a Hospital for the care and treatment of an inpatient. (See Hospital Services rules for inpatient covered services.)

(77) Institutional Level of Income Standards (ILIS) — Three times the amount SSI pays monthly to a person who has no other income and who is living alone in the community. This is the standard used for Medicaid eligible individuals to calculate eligibility for long-term nursing care in a Nursing Home, Intermediate Care Facilities for the mentally retarded (ICF/MR) and individuals on ICF/MR waivers or eligibility for services under SPDs Home and Community Based Waiver.

(78) Institutionalized — A patient admitted to a Nursing Facility or Hospital for the purpose of receiving nursing and/or hospital care for a period of 30 days or more.

(79) Laboratory — A facility licensed under ORS 438 and certified by the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, DHHS, as qualified to participate under Medicare, to provide laboratory services within or a part from a hospital. An entity is considered a laboratory if materials are derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings. If an entity performs even one laboratory test, including waived tests for these purposes, it is considered under the Clinical Laboratory Improvement Act (CLIA), to be a laboratory.

(80) Laboratory Services — Those professional and technical diagnostic analyses of blood, urine, and tissue ordered by a physician or other licensed practitioner of the healing arts within his/her scope of practice as defined under State law and provided to a patient by or under the direction of a physician or appropriate licensed practitioner in an office or similar facility, Hospital, or independent laboratory.

(81) Licensed Direct Entry Midwife — A practitioner licensed by the Oregon Health Division as a Licensed Direct Entry Midwife.

(82) Liability Insurance — Insurance that provides payment based on legal liability for injuries or illness. It includes, but is not limited to, automobile liability insurance, uninsured and underinsured motorist insurance, homeowner's liability insurance, malpractice insurance, product liability insurance, Worker's Compensation, and general casualty insurance. It also includes payments under state wrongful death statutes that provide payment for medical damages.

(83) Maternity Case Management — A program available to pregnant clients. The purpose of Maternity Case Management is to extend prenatal services to include non-medical services, which address social, economic and nutritional factors. For more information refer to the Medical-Surgical Services rules.

(84) Medicaid — A federal and state funded portion of the medical assistance programs established by Title XIX of the Social Security Act, as amended, administered in Oregon by the Department of Human Services.

(85) Medical Assistance Eligibility Confirmation — Verification through the Automated Information System (AIS), an authorized DHS representative, an authorized electronic eligibility vendor (EEVS) or through

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presentation of a valid Medical Care Identification that a client has an open assistance case, which includes medical benefits.

(86) Medical Services — Care and treatment provided by a licensed medical provider directed at preventing, diagnosing, treating or correcting a medical problem.

(87) Medical Transportation — Transportation to or from covered Medical Services.

(88) Medically Appropriate — Services and medical supplies that are required for prevention, diagnosis or treatment of a health condition which encompasses physical or mental conditions, or injuries, and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of an Oregon Health Plan client or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies which can be safely provided to an OMAP Member or PCM Member in the PHP's or Primary Care Manager's judgment.

(89) Medicare — A federally administered program offering health insurance benefits for persons aged 65 or older and certain other aged or disabled persons. This program includes:

(a) Hospital Insurance (Part A) for inpatient services in a Hospital or skilled Nursing Facility, home health care, and Hospice care; and

(b) Medical Insurance (Part B) for physicians' services, outpatient hospital services, home health care, end-stage renal dialysis, and other Medical Services and supplies.

(90) Medicare for Children and Teens — See EPSDT.

(91) Naturopath — A person licensed to practice naturopathy pursuant to State law.

(92) Naturopathic Services — Services provided within the scope of practice as defined under State law.

(93) Not Covered Services — Services or items for which OMAP is not responsible for payment. Not-covered services are identified in:

(a) OAR 410-120-1200, Medical Assistance Benefits: Excluded Services and Limitations; and,

(b) 410-120-1210, Benefit packages;

(c) 410-141-0480, Benefit Package of Covered Services;

(d) 410-141-0520, Prioritized List of Health Services; and

(e) The individual OMAP provider rules.

(94) Nurse Anesthetist, C.R.N.A. — A registered nurse licensed in the State of Oregon who is currently certified by the American Association of Nurse Anesthetists Council on Certification.

(95) Nurse Practitioner — A person licensed as a registered nurse and certified by the Board of Nursing to practice as a nurse practitioner pursuant to State law.

(96) Nurse Practitioner Services — Services provided within the scope of practice of a Nurse Practitioner as defined under State law and by rules of the Board of Nursing.

(97) Nursing Facility — A facility licensed and certified by the DHS Seniors and People with Disabilities as defined in 411-070-0005.

(98) Nursing Services — Health care services provided to a patient by a registered professional nurse or a licensed practical nurse under the direction of a licensed professional within the scope of practice as defined by State law.

(99) Nutritional Counseling — Counseling which takes place as part of the treatment of a person with a specific condition, deficiency or disease such as diabetes, hypercholesterolemia, or phenylketonuria.

(100) Occupational Therapist — A person licensed by the State Board of Examiners for Occupational Therapy.

(101) Occupational Therapy — The functional evaluation and treatment of individuals whose ability to adapt or cope with the task of living is threatened or impaired by developmental deficiencies, physical injury or illness, aging process, or psychological disability; the treatment utilizes task-oriented activities to prevent or correct physical and emotional difficulties or minimize the disabling effect of these deficiencies on the life of the individual.

(102) Office of Medical Assistance Programs (OMAP) — An Office within DHS; OMAP is responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP) Medicaid demonstration, the State Children's Health Insurance Program (SCHIP -Title XXI), and several other programs

(103) Office of Mental Health and Addiction Services — An Office within the Oregon Department of Human Services administering mental health and addiction programs and services.

(104) Optometric Services — Services provided, within the scope of practice of optometrists as defined under State law.

(105) Optometrist — A person licensed to practice optometry pursuant to State law.

(106) Oregon Medical Professional Review Organization (OMPRO) — OMPRO is the Oregon Professional Review Organization for Medicare and contracts with OMAP to provide Hospital utilization review and other services for the medical assistance programs. A Professional Review Organization is an organization established under federal law by the Department of Health and Human Services for the purpose of utilization review and quality assurance.

(107) Oregon Youth Authority — The state department charged with the management and administration of youth correction facilities, state parole and probation services and other functions related to state programs for youth corrections.

(108) Out-of-State Providers — Any provider located outside the borders of Oregon:

(a) Contiguous area providers are those located no more than 75 miles from the border of Oregon;

(b) Non-contiguous area providers are those located more than 75 miles from the borders of Oregon.

(109) Outpatient — a Hospital patient who:

(a) Is treated and released the same day or is admitted to the Hospital and discharged before midnight and is not listed on the following day's census, excluding a patient who:

(A) Is admitted and transferred to another acute care Hospital on the same day;

(B) Expires on the day of admission; or

(C) Is born in the Hospital.

(b) Is admitted for ambulatory surgery, to a birthing center, a treatment or observation room, or a short-term stay bed;

(c) Receives observation services provided by a Hospital, including the use of a bed and periodic monitoring by Hospital nursing or other staff for the purpose of evaluation of a patient's medical condition for a maximum of 48 hours; or

(d) Receives routine preparation services and recovery for diagnostic services provided in a Hospital Outpatient department.

(110) Outpatient Hospital Services — Services that are furnished in a Hospital for the care and treatment of an outpatient. (See Hospital rules for outpatient covered services).

(111) Overdue Claim — A valid claim that is not paid within 45 days of the date it was received.

(112) Overpayment — Payment(s) made by OMAP to a provider in excess of the correct OMAP payment amount for a service. Overpayments are subject to repayment to OMAP.

(113) Overuse — Use of medical goods or services at levels determined by OMAP medical staff and/or medical consultants to be medically unnecessary or potentially harmful.

(114) Panel — The Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999.

(115) Payment Authorization — Authorization granted by the responsible DHS agency, office or organization for payment prior or subsequent to the delivery of services, as described in these General Rules and the appropriate program rules. See the individual program rules for services requiring authorization.

(116) Prepaid Health Plan (PHP) — A managed health, dental, chemical dependency, or Mental Health Organization that contracts with OMAP and/or OMHAS on a case managed, prepaid, capitated basis under the Oregon Health Plan. PHP's may be Dental Care Organization (DCO), Fully Capitated Health Plan (FCHP), Mental Health Organization (MHO), Physician Care Organization (PCO), or Chemical Dependency Organization (CDO).

(117) Pharmaceutical Services — Services provided by a Pharmacist, including medications dispensed in a pharmacy upon an order of a licensed practitioner prescribing within his/her scope of practice.

(118) Pharmacist — A person licensed to practice pharmacy pursuant to state law.

(119) Physical Capacity Evaluation — An objective, directly observed measurement of a person's ability to perform a variety of physical tasks combined with subjective analysis of abilities of the person.

(120) Physical Therapist — A person licensed by the relevant State licensing authority to practice physical therapy.

ADMINISTRATIVE RULES

(121) Physical Therapy — Treatment comprising exercise, massage, heat or cold, air, light, water, electricity or sound for the purpose of correcting or alleviating any physical or mental disability, or the performance of tests as an aid to the assessment, diagnosis or treatment of a human being. Physical Therapy shall not include radiology or electrosurgery.

(122) Physician — A person licensed to practice medicine pursuant to state law of the state in which he/she practices medicine, or a person licensed to practice medicine pursuant to federal law for the purpose of practicing medicine under a contract with the federal government.

(123) Physician Assistant — A person licensed as a Physician Assistant in accordance with ORS 677. Physician Assistants provide Medical Services under the direction and supervision of an Oregon licensed physician according to a practice description approved by the Board of Medical Examiners.

(124) Physician Services — Services provided, within the scope of practice as defined under state law, by or under the personal supervision of a physician.

(125) Podiatric Services — Services provided within the scope of practice of podiatrists as defined under state law.

(126) Podiatrist — A person licensed to practice podiatric medicine pursuant to state law.

(127) Post-Payment Review — Review of billings and/or other medical information for accuracy, medical appropriateness, level of service or for other reasons subsequent to payment of the claim.

(128) Practitioner — A person licensed pursuant to state law to engage in the provision of health care services within the scope of the practitioner's license and/or certification.

(129) Primary Care Physician — A Physician who has responsibility for supervising, coordinating and providing initial and primary care to patients, initiating referrals for consultations and specialist care, and maintaining the continuity of patient care.

(130) Primary Care Provider — Any enrolled medical assistance provider who has responsibility for supervising, coordinating, and providing initial and primary care within their scope of practice for identified clients. Primary Care Providers initiate referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of medically appropriate client care.

(131) Prior Authorization (PA) — Payment Authorization for specified medical services or items given by OMAP staff, or its contracted agencies prior to provision of the service. A Physician referral is not a Prior Authorization.

(132) Private Duty Nursing Services — Nursing services provided within the scope of license by a registered nurse or a licensed practical nurse, under the general direction of the patient's Physician to an individual who is not in a health care facility.

(133) Provider — An individual, facility, institution, corporate entity, or other organization which supplies health care services or items or bills on behalf of a provider of services. The term Provider refers to both Performing Providers and Billing Providers unless otherwise specified.

(134) Public Health Clinic — A clinic operated by county government.

(135) Public Rates — The charge for services and items that Providers, including Hospitals and Nursing Facilities, made to the general public for the same service on the same date as that provided to OMAP clients.

(136) Qualified Medicare Beneficiary (QMB) — A Medicare beneficiary, as defined by the Social Security Act and its amendments.

(137) Qualified Medicare and Medicaid Beneficiary (QMM) — A Medicare Beneficiary who is also eligible for OMAP coverage.

(138) Radiological Services — Those professional and technical radiological and other imaging services for the purpose of diagnosis and treatment ordered by a physician or other licensed practitioner of the healing arts within the scope of practice as defined under state law and provided to a patient by or under the direction of a physician or appropriate licensed practitioner in an office or similar facility, hospital, or independent radiological facility.

(139) Recipient — A person who is currently eligible for Medical Assistance (also known as a client).

(140) Recoupment — An accounts receivable system that collects money owed by the provider to OMAP by withholding all or a portion of a provider's future payments.

(141) Referral — The transfer of total or specified care of a client from one provider to another. As used by OMAP, the term Referral also includes a request for a consultation or evaluation or a request or approval of specific services. In the case of clients whose medical care is contracted

through a Prepaid Health Plan (PHP), or managed by a Primary Care Physician, a referral is required before non-emergency care is covered by the PHP or OMAP.

(142) Remittance Advice (RA) — The automated notice a Provider receives explaining payments or other claim actions. It is the only notice sent to Providers regarding claim actions.

(143) Request for Hearing — A clear expression, in writing, by an individual or representative that the person wishes to appeal a Department decision or action and wishes to have the decision considered by a higher authority.

(144) Retroactive Medical Eligibility — Eligibility for medical assistance granted to a client retroactive to a date prior to the client's application for medical assistance.

(145) Sanction — An action against Providers taken by OMAP in cases of fraud, misuse or abuse of OMAP requirements.

(146) School Based Health Service — A health service required by an Individualized Education Plan (IEP) during a child's education program which addresses physical or mental disabilities as recommended by a Physician or other licensed Practitioner.

(147) Seniors and People with Disabilities (SPD) — An Office of the Oregon Department of Human Services responsible for the administration of programs for seniors and people with disabilities.

(148) Service Agreement — An agreement between the OMAP and a specified Provider to provide identified services for a specified rate. Service agreements may be limited to services required for the special needs of an identified client. Service Agreements do not preclude the requirement for a provider to enroll as a Provider.

(149) Sliding Fee Schedule — A fee schedule with varying rates established by a Provider of health care to make services available to indigent and low-income individuals. The Sliding Fee Schedule is based on ability to pay.

(150) Social Worker — A person licensed by the Board of Clinical Social Workers to practice clinical social work.

(151) Speech-Language Pathologist — A person licensed by the Oregon Board of Examiners for Speech Pathology.

(152) Speech-Language Pathology Services — The application of principles, methods, and procedure for the measuring, evaluating, predicting, counseling or instruction related to the development and disorders of speech, voice, or language for the purpose of preventing, habilitating, rehabilitating, or modifying such disorders in individuals or groups of individuals.

(153) Spend-Down — The amount the client must pay for medical expenses each month before becoming eligible for medical assistance under the Medically Needy Program. The spend-down is equal to the difference between the client's total countable income and Medically Needy program income limits.

(154) State Facility — A hospital or training center operated by the State of Oregon, which provides long-term medical or psychiatric care.

(155) Subrogation — Right of the State to stand in place of the client in the collection of Third Party Resources.

(156) Supplemental Security Income (SSI) — A program available to certain aged and disabled persons which is administered by the Social Security Administration through the Social Security office.

(157) Surgical Assistant — A person performing required assistance in surgery as permitted by rules of the State Board of Medical Examiners.

(158) Suspension — A sanction prohibiting a Provider's participation in DHS medical assistance programs by deactivation of the Provider's billing number for a specified period of time. No payments, Title XIX or State Funds, will be made for services provided during the suspension. The number will be reactivated automatically after the suspension period has elapsed.

(159) Targeted Case Management — Activities which will assist the client in a target group in gaining access to needed medical, social, educational and other services. This includes locating, coordinating, and monitoring necessary and appropriate services.

(160) Termination — A sanction prohibiting a Provider's participation in OMAP's programs by canceling the Provider's number and agreement. No payments, Title XIX or State Funds, will be made for services provided after the date of termination. Termination is permanent unless:

- (a) The exceptions cited in 42 CFR 1001.221 are met; or
- (b) Otherwise stated by OMAP at the time of termination.

(161) Third Party Resource (TPR) — A medical or financial resource which, under law, is available and applicable to pay for medical services and items for an OMAP client.

(162) Transportation — See Medical Transportation.

ADMINISTRATIVE RULES

(163) Type A Hospital — A Hospital identified by the Office of Rural Health as a Type A Hospital.

(164) Type B AAA Unit — A Type B Area Agency on Aging funded by Oregon Project Independence (OPI), Title III — Older Americans Act, and Title XIX of the Social Security Act.

(165) Type B Hospital — A Hospital identified by the Office of Rural Health as a Type B Hospital.

(166) Usual Charge (UC) — The lesser of the following unless prohibited from billing by federal statute or regulation:

(a) The Provider's charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month's charges;

(b) The Provider's lowest charge per unit of service on the same date that is advertised, quoted or posted. The lesser of these applies regardless of the payment source or means of payment;

(c) Where the Provider has established a written sliding fee scale based upon income for individuals and families with income equal to or less than 200% of the federal poverty level, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to Third Party Resources are to be considered.

(167) Utilization Review (UR) — The process of reviewing, evaluating, and assuring appropriate use of medical resources and services. The review encompasses quality, quantity, and appropriateness of medical care to achieve the most effective and economic use of health care services.

(168) Valid Claim — An invoice received by OMAP or the appropriate Department office for payment of covered health care services rendered to an eligible client which:

(a) Can be processed without obtaining additional information from the provider of the goods or services or from a third party; and

(b) Has been received within the time limitations prescribed in these General Rules

(169) Vision Services — Provision of corrective eyewear, including ophthalmological or optometric examinations for determination of visual acuity and vision therapy and devices.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1981, f. 1-23-81, ef. 3-1-81; AFS 33-1981, f. 6-23-81, ef. 7-1-81; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82, for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 57-1982, f. 6-28-82, ef. 7-1-82; AFS 81-1982, f. 8-30-82, ef. 9-1-82; AFS 4-1984, f. & ef. 2-1-84; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-84, ef. 9-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 13-1987, f. 3-31-87, ef. 4-1-87; AFS 7-1988, f. & cert. ef. 2-1-88; AFS 69-1988, f. & cert. ef. 12-5-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0005; HR 25-1991(Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 11-2000, f. & cert. ef. 6-23-00; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05

410-120-1200

Excluded Services and Limitations

Certain services or items are not covered under any program or for any group of eligible clients. If the client accepts financial responsibility for a non-covered service, payment is a matter between the Provider and the client subject to the requirements of OAR 410-120-1280. No payment will be made for any expense incurred for any of the following services or items:

(1) That are not expected to significantly improve the basic health status of the client as determined by the Office of Medical Assistance Programs (OMAP) staff, or its contracted agencies (e.g., OMAP's Medical Director, medical consultants, dental consultants or Peer Review Organization).

(2) That are not reasonable or necessary for the diagnosis and treatment of disability, illness, or injury.

(3) That are determined not medically or dentally appropriate by OMAP staff or authorized representatives, including OMPRO or any contracted utilization review organization.

(4) That are not properly prescribed as required by law or administrative rule by a licensed practitioner practicing within his/her scope of practice or licensure.

(5) That are for routine checkups or examinations for individuals age 21 or older in connection with participation, enrollment, or attendance in a program or activity not related to the improvement of health and rehabili-

tation of the client. Examples include exams for employment or insurance purposes.

(6) That are provided by friends or relatives of eligible clients or members of his/her household, except when the friend, relative or household member is a health professional, acting in a professional capacity, or when the friend, relative or household member is directly employed by the client under DHS Seniors & People with Disabilities (SPD) Home and Community Based Waiver.

(7) That are for services or items provided to a client who is in the custody of a law enforcement agency or an inmate of a non-medical public institution, including juveniles in detention facilities, except such services as designated by federal statute or regulation as permissible for coverage under OMAP administrative rules.

(8) Where the need for purchase, repair or replacement of materials or equipment is caused by adverse actions of clients to personally owned goods or equipment or to items or equipment rented or purchased by OMAP.

(9) That are related to a non-covered service; some exceptions are identified in the individual provider rules. If the provision of a service related to a non-covered service is determined by OMAP to be cost-effective, the related medical service may, at OMAP's discretion and with OMAP's prior authorization, be covered.

(10) Which are considered experimental or investigational or which deviate from acceptable and customary standards of medical practice or for which there is insufficient outcome data to indicate efficacy.

(11) That are identified in the appropriate program rules including the Hospital rules, Revenue Codes Section, as not covered.

(12) That are requested by or for a client who has been determined by OMAP to be non-compliant with treatment and who is unlikely to benefit from additional related, identical, or similar services.

(13) That are for copying or preparing records or documents excepting those Administrative Medical Reports requested by the branch offices or OMAP for casework planning or eligibility determinations.

(14) Whose primary intent is to improve appearance.

(15) Which are similar or identical to services or items which will achieve the same purpose at a lower cost and where it is anticipated that the outcome for the client will be essentially the same.

(16) For the purpose of establishing or reestablishing fertility or pregnancy or for the treatment of sexual dysfunction, including impotence, except as specified by the Prioritized List of Health Services (OAR 410-141-0520).

(17) Items or services which are for the convenience of the client and are not medically or dentally appropriate.

(18) The collection, processing and storage of autologous blood or blood from selected donors unless a physician certifies that the use of autologous blood or blood from a selected donor is medically appropriate and surgery is scheduled.

(19) Educational or training classes which are not medically appropriate (Lamaze classes, for example).

(20) Outpatient social services except Maternity Case Management services and other social services described as covered in the individual provider rules.

(21) Plasma infusions for treatment of Multiple Sclerosis.

(22) Post-mortem exams or burial costs, or other services subsequent to the death of a client.

(23) Radial keratometries.

(24) Recreational therapy.

(25) Telephone calls, including but not limited to telephone conferences between physicians or between a physician or other practitioner and a client or representative of the client, except for telephone calls for the purpose of tobacco cessation counseling, as described in OAR 410-130-0190, and Maternity Case Management as described in OAR 410-130-0587.

(26) Transsexual surgery or any related services or items.

(27) Weight loss programs, including, but not limited to Optifast, Nutrisystem, and other similar programs. Food supplements will not be authorized for use in weight loss.

(28) Whole blood (whole blood is available at no cost from the Red Cross); the processing, storage and costs of administering whole blood are covered.

(29) Immunizations prescribed for foreign travel.

(30) Services which are requested or ordered but not provided (i.e., an appointment which the client fails to keep or an item of equipment which has not been provided to the client).

(31) DUII-related services already covered by the Intoxicated Driver Program Fund as directed by ORS 813.270(1) and (5).

ADMINISTRATIVE RULES

(32) Transportation to meet a client's personal choice of a provider.

(33) Pain center evaluation and treatment.

(34) Alcoholics Anonymous and other self help programs.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76, Renumbered from 461-013-0030; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 103-1982, f. & ef. 11-1-82; AFS 15-1983(Temp), f. & ef. 4-20-83; AFS 31-1983(Temp), f. 6-30-83, ef. 7-1-83; AFS 43-1983, f. 9-2-83, ef. 10-1-83; AFS 61-1983, f. 12-19-83, ef. 1-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 57-1986, f. 7-25-86, ef. 8-1-86; AFS 78-1986(Temp), f. 12-16-86, ef. 1-1-87; AFS 10-1987, f. 2-27-87, ef. 3-1-87; AFS 29-1987(Temp), f. 7-15-87, ef. 7-17-87; AFS 54-1987, f. 10-29-87, ef. 11-1-87; AFS 51-1988(Temp), f. & cert. ef. 8-2-88; AFS 53-1988(Temp), f. 8-23-88, cert. ef. 9-1-88; AFS 58-1988(Temp), f. & cert. ef. 9-27-88; AFS 70-1988, f. & cert. ef. 12-7-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0055; 461-013-0103, 461-013-0109 & 461-013-0112; HR 5-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 19-1990, f. & cert. ef. 7-9-90; HR 23-1990(Temp), f. & cert. ef. 7-20-90; HR 32-1990, f. 9-24-90, cert. ef. 10-1-90; HR 27-1991 (Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0420, 410-120-0460 & 410-120-0480; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 6-1996, f. 5-31-96 & cert. ef. 6-1-96; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 12-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 22-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 8-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 17-2003(Temp), f. 3-13-03, cert. ef. 3-14-03 thru 8-15-03; OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05

410-120-1260

Provider Enrollment

(1) This rule applies only to providers seeking reimbursement from the Office of Medical Assistance Programs (OMAP), except as otherwise provided in OAR 410-120-1295.

(2) Signing the provider application constitutes agreement by performing and billing providers to comply with all applicable OMAP provider rules and federal and state laws and regulations.

(3) A Performing Provider is the Provider of a service or item. A Billing Provider is a person, agent, business, corporation, clinic, group, institution, or business entity that submits claims to or receives payment from OMAP on behalf of a Performing Provider. All references to Provider in this and other OMAP rules include both Performing and Billing Providers:

(a) A Performing Provider is responsible for identifying and keeping current the identification of their Billing Provider (if any) to OMAP. In order to facilitate timely claims processing and claims payment consistent with applicable privacy and security requirements, DHS requires Billing Providers to be enrolled consistent with subsection (11) of this rule. A Performing Provider's use of a Billing Provider that is not enrolled with OMAP may result in delay or rejection of claims processing or payment;

(b) If the Performing Provider uses electronic media to conduct transactions, or authorizes an agent to conduct such electronic transactions, the Performing Provider must comply with the DHS Electronic Data Interchange (EDI) rules, OAR 410-001-0100 et.seq.

(4) An individual or organization must meet applicable licensing and regulatory requirements set forth by federal and State statutes, regulations, and rules to be enrolled and to bill as a provider. In addition, all Providers of services within the State of Oregon must have a valid Oregon business license if such a license is a requirement of the state, federal, county or city government to operate a business or to provide services.

(5) An individual or organization that is currently subject to sanction(s) by OMAP, another state's Medicaid program, or federal government is not eligible for enrollment (see Provider Sanctions).

(6) Enrollment of Performing Providers. A Performing Provider number will be issued to an individual or organization providing covered health care services or items upon:

(a) Completion of the application and submission of the required documents;

(b) The signing of the Provider application by the Performing Provider or a person authorized by the Performing Provider to legally bind the organization or individual to compliance with these rules;

(c) Verification of licensing or certification. Loss of the appropriate licensure or certification will result in immediate disenrollment of the Provider and recovery of payments made subsequent to the loss of licensure or certification;

(d) Approval of the application by OMAP or the DHS unit responsible for enrolling the provider.

(7) Performing Providers may be enrolled retroactive to the date services were provided to an OMAP client only if:

(a) The Provider was appropriately licensed, certified and otherwise met all OMAP requirements for Providers at the time services were provided; and

(b) Services were provided less than 12 months prior to the date the application for Provider status was received by OMAP as evidenced by the date stamp placed on the application.

(8) Issuance of a provider number establishes enrollment of an individual or organization as a provider for the specific category (ies) of services covered by the OMAP enrollment application. For example, a pharmacy Provider number applies to pharmacy services but not to durable medical equipment, which requires a separate Provider application and establishes a separate Provider number.

(9) Required Updates: If a Provider changes address, business affiliation, licensure, ownership, certification, billing agents or Federal Tax Identification Number, the Office of Medical Assistance Programs must be notified in writing within 30 calendar days of the change.

(a) Failure to notify OMAP of a change of Federal Tax Identification Number may result in the imposing of a \$50 fine;

(b) In addition to subsection (a), if OMAP notifies a Provider about an error in Federal Tax Identification Number, the provider must supply a valid Federal Tax Identification Number within 30 calendar days of the date of OMAP's notice. Failure to comply with this requirement may result in OMAP imposing a fine of \$50 for each such notice. Federal Tax Identification Number requirements described in this rule refer to any such requirements established by the Internal Revenue Service;

(c) Changes in business affiliation, ownership, and Federal Tax Identification Number may require the submission of a new application;

(d) Claims submitted by, or payments made to, Providers who have not furnished the notification required by this rule or to a Provider that has failed to submit a new application as required by OMAP under this rule may be denied or recovered.

(10) Enrollment of Out of State Providers: Providers of services outside the state of Oregon will be enrolled as a Provider under section (6) of this rule if they comply with the requirements of section (6) and under the following conditions:

(a) The Provider is appropriately licensed or certified and meets standards established within the provider's state for participation in the state's Medicaid program. Disenrollment or sanction from the other state's Medicaid program is a basis for disenrollment, termination or suspension from participation as a provider in Oregon's medical assistance programs;

(b) The Provider bills only for services provided within the Provider's scope of licensure or certification;

(c) For noncontiguous Out-of-State Providers, the services provided must be authorized, in the manner required under these rules or other applicable rules by the Oregon DHS:

(A) For a specific Oregon Medicaid client who is temporarily outside Oregon or the contiguous area of Oregon; or

(B) For foster care or subsidized adoption children placed out of state; or

(C) The Provider is seeking Medicare deductible or coinsurance coverage for Oregon QMB clients.

(d) The services for which the Provider bills are covered services under the OMAP;

(e) Facilities, including but not restricted to Hospitals, rehabilitative facilities, institutions for care of individuals with mental retardation, Psychiatric Hospitals, and residential care facilities, will be enrolled as Providers only if the facility is enrolled as a Medicaid Provider in the state in which the facility is located or is licensed as a facility Provider of services by the State of Oregon;

(f) Out-of-State Providers may provide contracted services per OAR 410-120-1880.

(11) Enrollment of Billing Providers:

(a) A person or business entity that submits claims to OMAP or receives payments from OMAP on the behalf of a professional Performing Provider (e.g., Physician, Physical Therapist, Speech Therapist) must be enrolled as a Billing Provider with OMAP and meet all applicable federal and state laws and regulations;

(b) A Billing Provider number will be issued only to Billing Providers that have a contract with an enrolled performing provider to conduct billing on behalf of the performing provider, that have met the standards for enrollment as a Billing Provider and that have been delegated the authority to act on behalf of an the Performing Provider and to submit claims or receive payment on behalf of the Provider of services;

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(A) A corporate or business entity related to the Performing Provider under one of the relationships authorized by 42 CFR 447.10(g) may have the authority to submit the performing provider enrollment application and supporting documentation on behalf of the performing provider and the authority to submit claims and obtain payment on behalf of the Performing Provider;

(B) Any other contracted billing agent except as are described in subsection (A) of this section only has such authority to submit claims and to receive payment in the name of the Performing Provider pursuant to 42 CFR 447.10(f).

(C) These Billing Provider enrollment requirements do not apply to the staff directly employed by an enrolled Performing Provider, rather than pursuant to a contractual arrangement. Nothing in this rule is meant to prevent an enrolled Performing Provider from submitting his or her own claims and receiving payment in his or her own name. Notwithstanding this provision, if the Performing Provider is conducting electronic transactions, the DHS Electronic Data Interchange rules will apply, consistent with section (3) of this rule.

(c) A Billing Provider must maintain, and make available to OMAP, upon request, records indicating the Billing Provider's relationship with the Provider of service;

(d) Prior to submission of any claims or receipt of any payment from OMAP, the Billing Provider must obtain signed confirmation from the performing provider that the Billing Provider has been authorized by the Performing Provider to submit claims. This authorization, and any limitations or termination of such authorization, must be maintained in the Billing Provider's files for at least five years, following the submission of claims to OMAP;

(e) The Billing Provider fee must not be based on a percentage of the amount collected or whether or not they collect the subject's payment (42 CFR 447 subpart A).

(12) Utilization of Locum Tenens:

(a) For purposes of this rule, a locum tenens means a substitute physician retained to take over another physician's professional practice while he or she is absent (i.e., absentee physician) for reasons such as illness, vacation, continuing medical education, pregnancy, etc.

(b) Locum tenens are not required to enroll with OMAP; however, in no instance may an enrolled absentee physician utilize a substitute physician who is, at that time, excluded from participation in or under sanction by Medicaid or federally funded or federally assisted health programs.

(c) The absentee physician must be an enrolled OMAP Provider and must bill with their individual Medicaid Provider number and receive payment for covered services provided by the locum tenens physician. Services provided by the locum tenens must be billed with a modifier Q6:

(A) In entering the Q6 modifier, the absentee physician is certifying that the services are provided by a substitute physician identified in a record of the absentee physician which is available for inspection, and are services for which the absentee physician is authorized to submit a claim;

(B) A physician or other person who falsely certifies that the requirements of this section are met may be subject to possible civil and criminal penalties for fraud, and the enrolled Provider's right to receive payment or to submit claims may be revoked.

(13) Reciprocal Billing Arrangements:

(a) For purposes of this rule, reciprocal billing arrangements are similar in nature to a locum tenens in that a substitute physician is retained to take over another physician's professional practice on an occasional basis if the regular physician is unavailable (absentee physician);

(b) Providers with reciprocal billing arrangements are not required to enroll with OMAP; however, in no instance may an enrolled absentee physician utilize a substitute physician who is, at that time, excluded from participation in or under sanction by Medicaid or federally funded or federally assisted health programs.

(c) The absentee physician must be an enrolled OMAP provider and must bill with their individual Medicaid provider number and receive payment for covered services provided by the substitute physician. The absentee physician identifies the services provided by the substitute physician by using modifier Q5:

(A) In entering the Q5 modifier, the absentee physician is certifying that the services are provided by a substitute physician identified in a record of the absentee physician which is available for inspection, and are services for which the absentee physician is authorized to submit a claim.

(B) A physician or other person who falsely certifies that the requirements of this section are met may be subject to possible civil and criminal penalties for fraud, and the enrolled provider's right to receive payment or to submit claims may be revoked.

(c) These requirements do not apply to substitute arrangements among physicians in the same medical practice when claims are submitted in the name of the Billing Provider or group name. Nothing in this rules prohibits physicians sharing call responsibilities from opting out of the reciprocal billing (substitute provider) arrangement described in this rule and submitting their own claims for services provided, as long as all such physicians are themselves enrolled Performing Providers and as long as duplicate claims for services are not submitted.

(14) Provider termination:

(a) The Provider may terminate enrollment at any time. The request must be in writing, via certified mail, return receipt requested. The notice shall specify the provider number to be terminated and the effective date of termination. Termination of the Provider enrollment does not terminate any obligations of the provider for dates of services during which the enrollment was in effect;

(b) OMAP Provider terminations or suspensions may be for, but are not limited to the following reasons:

(A) Breaches of Provider agreement;

(B) Failure to comply with the statutes, regulations and policies of the Department of Human Services, Federal or State regulations that are applicable to the provider.

(C) When no claims have been submitted in an 18-month period. The provider must reapply for enrollment.

(15) When a Provider fails to meet one or more of the requirements governing a Provider's participation in Oregon's medical assistance programs, the Provider's OMAP Provider number may be immediately suspended. The Provider is entitled to a contested case hearing as outlined in 410-120-1600 through 410-120-1840 to determine whether the Provider's OMAP number will be revoked.

(16) The provision of health care services or items to OMAP clients is a voluntary action on the part of the Provider. Providers are not required to serve all OMAP clients seeking service.

(17) In the event of bankruptcy proceedings, the Provider must immediately notify the Director of OMAP in writing.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 683, f. 7-19-74, ef. 8-11-784; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; AFS 5-1981, f. 1-23-81, ef. 3-1-81, Renumbered from 461-013-0060; AFS 33-1981, f. 6-23-81, ef. 7-1-81; AFS 47-1982, f. 4-30-82, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 57-1982, f. 6-28-82, ef. 7-1-82; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 42-1983, f. 9-2-83, ef. 10-1-83; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 73-1989, f. & cert. ef. 12-7-89; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0063, 461-013-0075 & 461-013-0180; HR 19-1990, f. & cert. ef. 7-9-90; HR 41-1991, f. & cert. ef. 10-1-91; HR 51-1991(Temp), f. 11-29-91, cert. ef. 12-1-91; HR 5-1992, f. & cert. ef. 1-16-92; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0020, 410-120-0040 & 410-120-0060; HR 31-1994, f. & cert. ef. 11-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 9-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05

410-120-1280

Billing

(1) Medicaid Covered Services: The Provider must not bill the Office of Medical Assistance Programs (OMAP) more than the Provider's Usual Charge (see definitions) or the reimbursement specified in the applicable provider rules:

(a) A Provider enrolled with OMAP or providing services to a client in a Managed Care Plan (whether under a contract or as a non-participating provider) under the Oregon Health Plan (OHP) must not seek payment from a client eligible for the OMAP benefits, or from a financially responsible relative or representative of that individual, for any services covered by Medicaid fee-for-service or through contracted managed care plans, except any coinsurance, co-payments, and deductibles expressly authorized by the General Rules, OHP Rules or individual provider rules;

(b) Exceptions under which an enrolled Provider may seek payment from an eligible client or client representative are described below:

(A) The client did not inform the Provider of OHP eligibility, of OHP managed health plan enrollment, or of other third party insurance coverage, either at the time the service was provided or subsequent to the provision of the service or item, and as a result the Provider could not bill OMAP, the managed health care plan, or third party payer for any reason, including timeliness of claims, lack of prior authorization, etc. The provider must document attempts to obtain information on eligibility or enrollment;

(B) The client became eligible for OMAP benefits retroactively but did not meet other established criteria described in these General Rules and the appropriate provider rules (i.e., retroactive authorization);

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(C) A Third Party Resource made payments directly to the client for services provided;

(D) The client did not have full OMAP benefits. Clients receiving a limited Medicaid coverage, such as the Citizen Alien Waived Emergency Medical Program, may be billed for services that are not benefits of those programs. The Provider must document pursuant to section (2) of this rule that the client was informed that the service or item would not be covered by OMAP;

(E) The client has requested continuation of benefits during the Administrative Hearing process and final decision was not in favor of the client. The client will be responsible for any charges since the effective date of the initial notice of denial;

(F) A client cannot be billed for services or treatment that has been denied due to Provider error (e.g., required documentation not submitted, prior authorization not obtained, etc.);

(G) The charge is for a copayment when a client is required to make a copayment as outlined in OMAP General Rules (410-120-1230) and individual provider rules;

(H) In exceptional circumstances, a client may request continuation of a covered service while asserting the right to privately pay for that service. Under this exceptional circumstance, a client can be billed for a covered service if the client is informed in advance of receiving the specific service of all of the following:

(i) That the requested service is a covered service and that the provider would be paid in full for the covered service if the claim is submitted to OMAP or the client's managed care plan, if the client is a member of a managed care plan;

(ii) The estimated cost of the covered service, including all related charges, the amount that OMAP or the client's managed care plan would pay for the service, and that the client cannot be billed for an amount greater than the maximum OMAP reimbursable rate or managed care plan rate, if the client is a member of a managed care plan;

(iii) That the Provider cannot require the client to enter into a voluntary payment agreement for any amount for the covered service; and

(iv) That, if the client knowingly and voluntarily agrees to pay for the covered service, the Provider must not submit a claim for payment to OMAP or the client's managed care plan;

(v) Provider must be able to document in writing, signed by the client or the client's representative, that the client was provided the information described above; that the client was provided an opportunity to ask questions, obtain additional information and consult with the client's caseworker or client representative; and the client agreed to be responsible for payment by signing an agreement incorporating all of the information described above. The client must be given a copy of the signed agreement. A provider must not submit a claim for payment for covered services to OMAP or to the client's managed care plan that are subject to such agreement.

(2) Non-Covered Medicaid Services:

(a) A client may be billed for services that are not covered by OMAP or the managed care plan. However, the client must be informed in advance of receiving the specific service that it is not covered, the estimated cost of the service, and that the client or client's representative is financially responsible for payment for the specific service. Providers must be able to document in writing signed by the client or client's representative, that the client was provided this information and the client knowingly and voluntarily agreed to be responsible for payment;

(b) Services which are considered non-covered are listed in the following rules (in rule precedence order):

(A) OAR 410-141-0480, Benefit Package of Covered Services; and

(B) OAR 410-141-0520, Prioritized List of Health Services; and

(C) OAR 410-120-1200, Medical Assistance Benefits: Excluded services and limitations; and

(D) Applicable provider rules.

(c) A client cannot be billed for missed appointments. A missed appointment is not considered to be a distinct Medicaid service by the federal government and as such is not billable to the client or OMAP.

(3) All claims must be billed on the appropriate form as described in the individual provider rules or submitted electronically in a manner authorized by the Department of Human Services Electronic Data Interchange rules, OAR 410-001-0100 et. seq.

(4) Upon submission of a claim to OMAP for payment, the Provider agrees that it has complied with all OMAP provider rules. Submission of a claim, however, does not relieve the Provider from the requirement of a signed Provider agreement.

(5) All billings must be for services provided within the Provider's licensure or certification.

(6) It is the responsibility of the provider to submit true and accurate information when billing OMAP. Use of a Billing Provider does not abrogate the Performing Provider's responsibility for the truth and accuracy of submitted information.

(7) A claim must not be submitted prior to delivery of service. A claim must not be submitted prior to dispensing, shipment or mailing of the item unless specified otherwise in OMAP's individual provider rules.

(8) A claim is considered a Valid Claim only if all required data is entered on or attached to the claim form. See the appropriate provider rules for specific instructions and requirements. Also, see Valid Claim in the Definitions section of these rules.

(9) The HIPAA Codes rules, 45 CFR 162, apply to all Medicaid Code Set requirements, including the use of diagnostic or procedure codes for prior authorization, claims submissions and payments. Code Set has the meaning established in 45 CFR 162.100, and it includes the codes and the descriptors of the codes. These federal Code Set requirements are mandatory and OMAP lacks any authority to delay or alter their application or effective dates as established by the U.S. Department of Health and Human Services.

(a) OMAP will adhere to the national Code Set requirements in 45 CFR 162.1000-162.1011, regardless of whether a request is made verbally, or a claim is submitted on paper or electronically;

(b) Periodically, OMAP will update its provider rules and tables to conform to national codes. In the event of an alleged variation between an OMAP-listed code and a national code, the national code in effect on the date of request or date of service will be applied by OMAP and the provider, and the OMAP-listed code may be used for the limited purpose of describing OMAP's intent in identifying the applicable national code;

(c) Only codes with limitations or requiring prior authorization are noted in rules. National code set issuance alone should not be construed as OMAP coverage, or a covered service.

(10) Diagnosis Code Requirement:

(a) A primary diagnosis code is required on all claims, using the HIPAA nationally required diagnosis Code Set, unless specifically excluded in individual OMAP provider rules;

(b) When billing using ICD-9-CM codes, all diagnosis codes are required to the highest degree of specificity;

(c) Hospitals are always required to bill using the 5th digit, in accordance with methodology used in the Medicare Diagnosis Related Groups.

(11) For claims requiring a procedure code the provider must bill as instructed in the appropriate OMAP provider rules and must use the appropriate HIPAA procedure Code Set such as CPT, HCPCS, ICD-9-CM, ADA CDT, NDC, established according to 45 CFR 162.1000 to 162.1011, which best describes the specific service or item provided. For claims which require the listing of a diagnosis or procedure code as a condition of payment, the code listed on the claim form must be the code which most accurately describes the client's condition and the service(s) provided. Providers must use the ICD-9-CM diagnosis coding system when a diagnosis is required unless otherwise specified in the appropriate individual provider rules. Hospitals must follow national coding guidelines:

(a) Where there is no appropriate descriptive procedure code to bill OMAP, the Provider must use the code for Unlisted Services. Instructions on the specific use of unlisted services are contained in the individual provider rules. A complete and accurate description of the specific care, item, or service must be documented on the claim;

(b) Where there is one CPT, CDT or HCPCS code that according to CPT, CDT and HCPCS coding guidelines or standards, describes an array of services the provider must bill OMAP using that code rather than itemizing the services under multiple codes. Providers must not "unbundled" services in order to increase payment by OMAP.

(12) No Provider or its contracted agency shall submit or cause to be submitted to OMAP:

(a) Any false claim for payment;

(b) Any claim altered in such a way as to result in a payment for a service which has already been paid;

(c) Any claim upon which payment has been made or is expected to be made by another source unless the amount paid or to be paid by the other party is clearly entered on the claim form;

(d) Any claim for furnishing specific care, item(s), or service(s) that have not been provided.

(12) The provider is required to submit an Individual Adjustment Request, or to refund the amount of the overpayment, on any claim where the provider identifies an overpayment made by OMAP.

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(13) A provider who, after having been previously warned in writing by OMAP or the Department of Justice about improper billing practices, is found to have continued such improper billing practices and has had an opportunity for a contested case hearing, shall be liable to OMAP for up to triple the amount of the OMAP established overpayment received as a result of such violation.

(14) Third Party Resources (TPR):

(a) Federal law requires that state Medicaid agencies take all reasonable measures to ensure that in most instances OMAP will be the payer of last resort;

(b) Providers must make reasonable efforts to obtain payment first from other resources. For the purposes of this rule "reasonable efforts" include, but are not limited to:

(A) Determining the existence of insurance or other resource by asking the recipient;

(B) Using an insurance database such as Electronic Eligibility Verification Services (EEVS) available to the Provider;

(C) Verifying the client's insurance coverage through the Automated Information System (AIS) or the Medical Care Identification on each date of service and at the time of billing.

(c) Except as noted in (14)(d)(A)–(E), when third party coverage is known to the provider, as indicated on the Medical Care Identification or through AIS, or any other means available, prior to billing OMAP:

(A) The Provider must bill the TPR; and

(B) Except for pharmacy claims billed through OMAP's point-of-sale system the Provider must have waited 30 days from submission date of a clean claim and have not received payment from the third party; and

(C) Complied with the insurer's billing and authorization requirements; and

(D) Appealing a denied claim when the service is payable in whole or in part by an insurer.

(d) In accordance with federal regulations the Provider must bill the TPR prior to billing OMAP, except under the following circumstances:

(A) The covered health service is provided by an Intermediate Care Facility Services for the Mentally Retarded (ICF/MR);

(B) The covered health service is provided by institutional services for the mentally and emotionally disturbed;

(C) The covered health services are prenatal and preventive pediatric services;

(D) Services are covered by a third party insurer through an absent parent where the medical coverage is administratively or court ordered;

(E) When another party may be liable for an injury or illness (see definition of Liability Insurance), the Provider may bill the insurer or liable party or place a lien against a settlement or the Provider may bill OMAP. The Provider may not both place a lien against a settlement and bill OMAP. The Provider may withdraw the lien and bill OMAP within 12 months of the date of service. If the Provider bills OMAP the Provider must accept payment made by OMAP as payment in full. The Provider must not return the payment made by OMAP in order to accept payment from a liability settlement or liability insurer or place a lien against that settlement:

(i) In the circumstances outlined in (14)(d)(A through E) above, the Provider may choose to bill the primary insurance prior to billing OMAP. Otherwise, OMAP will process the claim and, if applicable, will pay the OMAP allowable rate for these services and seek reimbursement from the liable third party insurance plan;

(ii) In making the decision to bill OMAP the provider should be cognizant of the possibility that the third party payer may reimburse the service at a higher rate than OMAP, and that once payment has been made by OMAP, no additional billing to the third party is permitted by the Provider.

(e) The Provider may bill OMAP directly for services that are never covered by Medicare or another insurer on the appropriate form identified in the relevant provider rules. Documentation must be on file in the provider's records indicating this is a non-covered service for purposes of Third Party Resources. See the individual provider rules for further information on services that must be billed to Medicare first;

(f) Providers are required to submit an Individual Adjustment Request showing the amount of the third party payment or to refund the amount received from another source within 30 days of the date the payment is received. Failure to submit the Individual Adjustment Request within 30 days of receipt of the third party payment or to refund the appropriate amount within this time frame is considered concealment of material facts and grounds for recovery and/or sanction;

(A) When a Provider receives a payment from any source prior to the submission of a claim to OMAP, the amount of the payment must be shown as a credit on the claim in the appropriate field;

(B) Except as described in (14), any Provider who accepts third party payment for furnishing a service or item to an OMAP client shall:

(i) Submit an Individual Adjustment Request after submitting a claim to OMAP following instructions in the individual provider rules and supplemental billing information, indicating the amount of the third party payment; or

(ii) When the Provider has already accepted payment from OMAP for the specific service or item, the Provider shall make direct payment of the amount of the third party payment to OMAP. When the Provider chooses to directly repay the amount of the third party payment to OMAP, the Provider must indicate the reason the payment is being made and must submit with the check:

(I) An Individual Adjustment Request which identifies the original claim, name and number of the client, date of service and item(s) or service(s) for which the repayment is made; or

(II) A copy of the Remittance Advice showing the original payment by OMAP

(g) OMAP reserves the right to make a claim against any third party payer after making payment to the provider of service. OMAP may pursue alternate resources following payment if it deems this a more efficient approach. Pursue alternate resources includes, but is not limited to, requesting the Provider to bill the third party and to refund OMAP in accordance with (15) of this rule;

(h) For services rendered to a Medicare and Medicaid dual eligible client, OMAP may request the Provider to submit a claim for Medicare payment and the Provider must honor that request. Under federal regulation, a Provider agrees not to charge a beneficiary (or the state as the beneficiary's subrogee) for services for which a Provider failed to file a timely claim (42 CFR 424) with Medicare despite being requested to do so.

(15) Full Use of Alternate Resources:

(a) OMAP will generally make payment only when other resources are not available for the client's medical needs. Full use must be made of reasonable alternate resources in the local community;

(b) Except as provided in subsection (16) of this rule, alternate resources may be available:

(A) Under a federal or state worker's compensation law or plan;

(B) For items or services furnished by reason of membership in a prepayment plan;

(C) For items or services provided or paid for directly or indirectly by a health insurance plan or as health benefits of a governmental entity, such as:

(i) Armed Forces Retirees and Dependents Act (CHAMPVA);

(ii) Armed Forces Active Duty and Dependents Military Medical Benefits Act (CHAMPUS); and

(iii) Medicare Parts A and B.

(D) To residents of another state under that state's Title XIX or state funded medical assistance programs; or

(E) Through other reasonably available resources.

(16) Exceptions:

(a) Indian Health Services or Tribal Health Facilities. Pursuant to 42 CFR 35.61 subpart G and the Memorandum of Agreement in OAR 310-146-0000, Indian Health Services facilities and tribal facilities operating under a section 638 agreement are payors of last resort, and are not considered an alternate resource or TPR;

(b) Veterans Administration. Veterans who are also eligible for Medicaid benefits are encouraged to utilize Veterans' facilities whenever possible. Veterans benefits are prioritized for service related conditions and as such is not considered an alternate or TPR. **Table 1280 -TPR Codes.** [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; AFS 5-1981, f. 1-23-81, ef. 3-1-81, Renumbered from 461-013-0050, 461-013-0060, 461-013-0090 & 461-013-0020; AFS 47-1982, f. 4-30-82, & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 42-1983, f. 9-2-83, ef. 10-1-83; AFS 45-1983, f. 9-19-83, ef. 10-1-83; AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 36-1984, f. & ef. 8-20-84; AFS 24-1985, f. 4-24-85, cert. ef. 6-1-85; AFS 33-1986, f. 4-11-86, ef. 6-1-86; AFS 43-1986, f. 6-13-86, ef. 7-1-86; AFS 57-1986, f. 7-25-86, ef. 8-1-86; AFS 14-1987, f. 5-31-87, ef. 4-1-87; AFS 38-1988, f. 5-17-88, cert. ef. 6-1-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0140, 461-013-0150, 461-013-0175 & 461-013-0180; HR 19-1990, f. & cert. ef. 7-9-90; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0260, 410-120-0280, 410-120-0300 & 410-120-0320; HR 31-1994, f. & cert. ef. 11-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-10-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 30-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 23-2002, f. 6-14-02 cert. ef. 8-1-02; OMAP 42-2002, f.

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& cert. ef. 10-1-02; OMAP 73-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05

410-120-1320

Authorization of Payment

(1) Some of the services or items covered by the Office of Medical Assistance Programs (OMAP) require authorization before payment will be made. Some services require authorization before the service can be provided. See the appropriate provider rules for information on services requiring authorization and the process to be followed to obtain authorization. Services (except medical transportation) for clients identified by OMAP as "medically fragile children," shall be authorized by the Department of Human Services (DHS) Medically Fragile Children's Unit.

(2) Documentation submitted when requesting authorization must support the medical justification for the service. A complete request is one which contains all necessary documentation and meets any other requirements as described in the appropriate provider rules.

(3) The authorizing agency will authorize for the level of care or type of service which meets the client's medical need. Only services which are medically appropriate and for which the required documentation has been supplied may be authorized. The authorizing agency may request additional information from the provider to determine medical appropriateness or appropriateness of the service.

(4) The Department and its authorizing agencies are not required to authorize services or to make payment for authorized services under the following circumstances:

(a) The client was not eligible at the time services were provided. The provider is responsible for checking the client's eligibility each time services are provided;

(b) Upon request by OMAP, the Provider cannot produce appropriate documentation to support medical appropriateness, or the appropriate documentation was not submitted to the authorizing agency;

(c) The service has not been adequately documented (see 410-120-1360, Requirements for Financial, Clinical and Other Records); that is, the documentation in the Provider's files is not adequate to determine the type, medical appropriateness, or quantity of services provided and required documentation is not in the Provider's files;

(d) The services billed or provided are not consistent with the information submitted when authorization was requested and/or the services provided are determined retrospectively not to be medically appropriate;

(e) The services billed are not consistent with those provided;

(f) The services were not provided within the timeframe specified on the authorization of payment document;

(g) The services were not authorized or provided in compliance with the rules in these General Rules and in the appropriate provider rules.

(5) Payment made for services described in subsections (a) through (g) of this rule will be recovered (see also Basis for Mandatory Sanctions and Basis for Discretionary Sanctions).

(6) Retroactive Eligibility:

(a) In those instances where clients are made retroactively eligible, authorization for payment may be given if (A) through (C) of this rule are met;

(b) Services provided when a Title XIX client is retroactively disenrolled from a plan or services provided after the client was disenrolled from a plan may be authorized if (A) through (C) of this rule are met:

(A) The client was eligible on the date of service;

(B) The services provided meet all other criteria and Oregon Administrative Rules;

(C) The request for authorization is received by the appropriate DHS branch or OMAP within 90 days of the date of service.

(c) Any requests for authorization after 90 days from date of service require documentation from the provider that authorization could not have been obtained within 90 days of the date of service.

(7) Period of Authorization: Authorization of payment is valid for the time period specified on the authorization notice, but not to exceed 12 months, except that if the client's benefit package no longer covers the service, the authorization shall terminate on the date coverage ends.

(8) Payment Authorization for clients with other insurance or for Medicare beneficiaries:

(a) Medicare: When Medicare is the primary payer for a service, no payment authorization from OMAP is required, unless specified in the appropriate program provider rules;

(b) Private Insurance or Other Third Party Resources (TPRs): For clients who have other TPRs (Blue Cross, Champus, etc.), payment authorization is required as specified above and in the appropriate provider guide

when the other insurer or resource does not cover the service and/or when the other insurer reimburses less than the OMAP rate;

(c) Managed Care Providers: Authorization for some services for clients in a SHMO (Medicare's Social Health Maintenance Organization) is required by the managed care provider. Services which are covered under OMAP but which are not covered under the SHMO's require authorization as specified above and in the appropriate provider rules.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; AFS 14-1979, f. 6-29-79, ef. 7-1-79; AFS 5-1981, f. 1-23-81, ef. 3-1-81; Renumbered from 461-013-0060; AFS 13-1981, f. 2-27-81, ef. 3-1-81; AFS 33-1981, f. 6-23-81, ef. 7-1-81; Renumbered from 461-013-0041; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 7-1984(Temp), f. 2-28-84, ef. 3-15-84; AFS 11-1984(Temp), f. 3-14-84, ef. 3-15-84; AFS 37-1984, f. 8-30-84, ef. 9-1-84; AFS 38-1986, f. 4-29-86, ef. 16-1-86; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90; Renumbered from 461-013-0106 & 461-013-0180; HR 32-1990, f. 9-24-90, cert. ef. 10-1-90; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93; Renumbered from 410-120-0180; HR 22-1994, f. 5-31-94, cert. ef. 6-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 6-1996, f. 5-31-96, cert. ef. 6-1-96; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05

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Adm. Order No.: OMAP 11-2005

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Rules Amended: 410-122-0010, 410-122-0020, 410-122-0040, 410-122-0055, 410-122-0200, 410-122-0202, 410-122-0203, 410-122-0204, 410-122-0208, 410-122-0209, 410-122-0210, 410-122-0375, 410-122-0420, 410-122-0590, 410-122-0625, 410-122-0660

Subject: The Durable Medical Equipment, Prosthetics, Orthotics and Medical Supplies (DMEPOS) program administrative rules govern the Office of Medical Assistance Programs' payments for certain services rendered to clients. OMAP permanently amended rules listed above to reflect technical changes, code updates and word clarification. OMAP amended 410-122-0020 to rename and rewrite content for clarification only.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-122-0010

Definitions

(1) Buy up — "Buy-up" refers to a situation in which a client wants to upgrade to a higher level of service than he or she is eligible for; e.g., a heavy duty walker instead of a regular walker.

(2) Consecutive Months — Any period of continuous use where no more than a 60-day break occurs.

(3) Home — For purposes of purchase, rental and repair of durable medical equipment that is used primarily as a supportive measure in meeting a client's basic daily living activities, home is a place of permanent residence, such as an assisted living facility (includes the common dining area), a 24-hour residential care facility, an adult foster home, a child foster home or a private home. This does not include hospitals or nursing facilities or any other setting that exists primarily for the purpose of providing medical/nursing care.

(4) Lifetime need — 99 months or more.

(5) Manufacturer Part Number (MPN):

(a) Each manufacturer provides an MPN to identify that manufacturer's part. It is a specification used by the manufacturer to store a part in an illustrated part catalog (graphics and text);

(b) An MPN uniquely identifies a part when used together with manufacturer code (external manufacturer), which is the own name used by the manufacturer and not the manufacturer name provided by other.

(6) OMAP's Maximum Allowable Rate — The maximum amount paid by OMAP for a service.

(7) Practitioner — A person licensed pursuant to Federal and State law to engage in the provision of health care services within the scope of the practitioner's license and certification.

(8) Purchase price — Includes:

(a) Delivery;

(b) Assembly;

(c) Adjustments, if needed; and

(d) Training in the use of the equipment or supply.

(9) Rental fees — Include:

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- (a) Delivery;
 - (b) Training in the use of the equipment;
 - (c) Pick-up;
 - (d) Routine service, maintenance and repair; and
 - (e) Moving equipment to new residence, if coverage is to continue.
- (10) Technician – A DMEPOS provider staff professionally trained through product or vendor-based training, technical school training (e.g., electronics) or through apprenticeship programs with on-the-job training.
- Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 54-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

410-122-0020

Orders

(1) The purchase, rental or modifications of durable medical equipment, and the purchase of supplies must have an order prior to dispensing items to a client.

(2) For any durable medical equipment, prosthetics, orthotics and supplies (DMEPOS), a provider must have a written order signed and dated by the treating practitioner prior to submitting a claim to the Office of Medical Assistance Programs (OMAP).

(3) A provider may dispense some items based on a verbal order from the treating practitioner, except those items requiring a written order prior to delivery (see below) or as specified in a particular rule. (a) A provider must maintain documentation of the verbal order and this documentation must be available to OMAP upon request.

(b) The verbal order must include all the following elements:

- (A) Client's name; and
- (B) Name of the practitioner; and
- (C) Description of the item; and
- (D) Start date of the order; and
- (E) Primary ICD-9 diagnosis code for the equipment/supplies requested.

(c) For items that are dispensed based on a verbal order, the provider must obtain a written order that meets the requirements outlined below for written orders.

(4) For an item requiring a written order prior to delivery, Medicare policy must be followed (www.cignamedicare.com).

(5) The DMEPOS provider must have on file a written order, information from the treating practitioner concerning the client's diagnosis and medical condition, and any additional information required in a specific rule.

(6) OMAP accepts any of the following forms of orders and Certificates of Medical Necessity (CMN): a photocopy, facsimile image, electronically maintained or original "pen and ink" document. (a) An electronically maintained document is one which has been created, modified, and stored via electronic means such as commercially available software packages and servers.

(b) It is the provider's responsibility to ensure the authenticity/validity of a facsimile image, electronically maintained or photocopied order.

(c) A provider must also ensure the security and integrity of all electronically maintained orders and/or certificates of medical necessity.

(d) The written order may serve as the order to dispense the item if the written order is obtained before the item is dispensed.

(7) A written order must be legible and contain the following elements:

- (a) Client's name; and
- (b) Detailed description of the item that can either be a narrative description (e.g., lightweight wheelchair base) or a brand name/model number including medically appropriate options or additional features; and
- (c) The detailed description of the item may be completed by someone other than the practitioner. However, the treating practitioner must review the detailed description and personally indicate agreement by his signature and the date that the order is signed.
- (d) Primary ICD-9 diagnosis code for the equipment/supplies requested.

(8) A provider is responsible to obtain as much documentation from the client's medical record as necessary for assurance that OMAP coverage criteria for an item(s) is met.

(9) Certain items require one or more of the following additional elements in the written order:

- (a) For accessories or supplies that will be provided on a periodic basis:
- (A) Quantity used.

(B) Specific frequency of change or use — "as needed" or "prn" orders are not acceptable.

(C) Number of units.

(D) Length of need: Example: An order for surgical dressings might specify one 4" x 4" hydrocolloid dressing which is changed one to two times per week for one month or until the ulcer heals.

(b) For orthoses: If a custom-fabricated orthosis is ordered by the physician, this must be clearly indicated on the written order.

(c) Length of need:

(A) If the coverage criteria in a rule specifies length of need; or,

(B) If the order is for a rental item.

(d) Any other medical documentation required by rule.

(10) A physician's order is not required for repairs.

(11) Only the initial lifetime order is required, unless otherwise indicated by the treating practitioner or unless there is a change in the original order, for the following items:

- (a) Ventilators;
- (b) Suction pumps and related accessories;
- (c) Intermittent positive pressure breathing (IPPB) devices;
- (d) Continuous positive airway pressure (CPAP) devices and related accessories;
- (e) Respiratory assist devices (RAD) and related accessories;
- (f) Medicare 15-month capped rentals (follow Medicare guidelines related to prescription requirements and certificates of medical necessity).

(12) A new order is required:

- (a) When required by Medicare (www.cignamedicare.com);
- (b) When there is a change in the original order for an item;
- (c) When an item is replaced;

(A) A new order is required when an item is being replaced because the item is worn or the client's condition has changed; and,

(B) The provider's records should also include client-specific information regarding the need for the replacement item; and,

(C) This information should be maintained in the provider's files and be available to OMAP on request; and,

(D) A new order is required before replacing lost, stolen or irreparably damaged items to reaffirm the medical appropriateness of the item.

(d) When there is a change of DMEPOS provider: In cases where two or more providers merge, the resultant provider should make all reasonable attempts to secure copies of all active CMN's and written orders from the provider(s) purchased. This document should be kept on file by the resultant provider for future presentation to OMAP, if requested.

(e) On a regular or specific basis (even if there is no change in the order) only if it is so specified in a particular rule.

(13) A provider is required to maintain and provide (when required by a particular rule) legible copies of facsimile image and electronic transmissions of orders.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 41-1982, f. 4-29-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 in the North Salem, Woodburn, McMinnville, Lebanon, Albany and Corvallis branch offices, ef. 6-30-82 in the balance of the state; AFS 20-1983, f. 5-5-83, ef. 6-1-83; AFS 49-1987, f. 10-16-87, ef. 11-1-87; AFS 48-1989, f. & cert. ef. 8-24-89; HR 13-1991, f. & cert. ef. 3-1-91; Renumbered from 461-024-0004; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 72-2002(Temp), f. & cert. ef. 12-24-02 thru 5-15-03; OMAP 36-2003, f. & cert. ef. 5-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

410-122-0040

Prior Authorization Requirements

(1) Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) providers must obtain prior authorization (PA) for DMEPOS that indicate PA is required, unless otherwise noted in a specific rule.

(2) PA must be requested as follows (see the DMEPOS Supplemental Information for contact information):

(a) For Medically Fragile Children's Unit (MFCU) clients, PA must be requested from the Department of Human Services (DHS) MFCU;

(b) For clients enrolled in the fee-for-service (FFS) Medical Case Management (MCM) program, PA must be requested from the MCM contractor;

(c) For clients enrolled in an OMAP Medical Plan, PA must be requested from the OMAP Medical Plan;

(d) For all other clients, PA must be requested from the Office of Medical Assistance Programs (OMAP).

(3) For clients with Medicare coverage, PA is only required for DMEPOS not covered by Medicare.

ADMINISTRATIVE RULES

(4) PA requests must be submitted within five working days from the initiation of service for DMEPOS provided after normal working hours.

(5) See OAR 410-120-1320 for more information about PA.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 3-1982, f. 1-20-82, ef. 2-1-82; AFS 14-1984 (Temp), f. & ef. 4-2-84; AFS 22-1984(Temp), f. & ef. 5-1-84; AFS 40-1984, f. 9-18-84, ef. 10-1-84; AFS 6-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 13-1991, f. & cert. ef. 3-1-91; Renumbered from 461-024-0010; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 6-2004, f. 2-10-04 cert. ef. 3-15-04; OMAP 20-2004(Temp), f. & cert. ef. 3-15-04 thru 4-30-04; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 26-2004, f. 4-15-04 cert. ef. 5-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

410-122-0055

Standard Benefit Package Limitations

(1) Durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) coverage for the Oregon Health Plan (OHP) Standard benefit package is limited to the codes listed in Table 122-0055. Coverage requirements and limitations as specified in chapter 410, division 122 apply. For more information about the OHP Standard benefit package, see the Office of Medical Assistance Programs (OMAP) General Rules (chapter 410, division 120).

(2) OHP Standard benefit package coverage includes limited home enteral/parenteral nutrition and intravenous services. For more information, see Home Enteral/Parenteral Nutrition and Intravenous Services (chapter 410, division 148).

(3) Table 122-0055

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

410-122-0200

Pulse Oximeter

(1) Indications and Coverage:

(a) A pulse oximeter may be covered if:

(A) The client has evidence of more than three desaturations below 88% per month; and

(B) At least one of the following conditions exist:

(i) The client exhibits signs or symptoms of acute respiratory dysfunction;

(ii) The client has chronic lung disease, chest trauma, severe cardiopulmonary disease, or neuromuscular disease involving the muscles of respiration;

(iii) The client is on a ventilator and there is a need to adjust the ventilator settings, wean from the ventilator or to monitor for an acute change in condition;

(iv) The client has a chronic condition resulting in hypoxemia and there is a need to assess supplemental oxygen requirements and/or a therapeutic regimen.

(b) An aggregate of the pulse oximeter results must be reviewed and evaluated by the treating practitioner on a regular basis;

(c) Routine use of pulse oximetry monitoring is not covered (example: a patient with chronic, stable cardiopulmonary problems).

(2) Documentation:

(a) Submit the following documentation for review:

(A) A practitioner order that clearly specifies the medical appropriateness for pulse oximetry testing;

(B) Documentation of signs/symptoms/medical condition exhibited by the client, that require continuous pulse oximetry monitoring as identified by the need for oxygen titration, frequent suctioning or ventilator adjustments;

(C) Plan of treatment that identifies a trained individual available to perform the testing, document the frequency and the results and implement the appropriate therapeutic intervention, if necessary.

(b) An appropriate history and physical exam and progress notes must be available for review, upon request;

(c) For an initial request, approval may be given for no longer than the first three months of rental;

(d) Continued approval beyond the initial authorization, is based on ongoing review of above documentation including appropriate and regular medical oversight and direction to support the need, including an identified intervention plan by the treating practitioner.

(3) Procedure Codes:

(a) A4606 — Oxygen probe for use with client-owned oximeter device, replacement:

(A) PA required;

(B) The Office of Medical Assistance Programs (OMAP) will purchase.

(b) E0445 — Oximeter device for measuring blood oxygen levels non-invasively, per month:

(A) PA required;

(B) OMAP will rent;

(C) OMAP will repair;

(D) Item considered purchased after 16 months of rent;

(E) Quantity (units) is one on a given date of service;

(F) The allowable rental fee includes all equipment, supplies, services routine maintenance and necessary training for the effective use of the pulse oximeter.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 32-1999, f. & cert. ef. 10-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

410-122-0202

Continuous Positive Airway Pressure (CPAP) System

(1) A continuous positive airway pressure system (CPAP) is a non-invasive technique for providing single levels of air pressure from a flow generator, via nose mask or face mask. This is to prevent the collapse of the oropharyngeal walls and the obstruction of airflow during sleep.

(2) Definitions:

(a) Apnea-Hypopnea Index (AHI) is defined as the average number of episodes of apnea and hypopnea per hour and must be based on a minimum of two hours of recording time without the use of a positive airway pressure device, reported by polysomnogram. The AHI may not be extrapolated or projected;

(b) Apnea is defined as a cessation of airflow for at least 10 seconds documented on a polysomnogram;

(c) Hypopnea is defined as an abnormal respiratory event lasting at least 10 seconds with at least a 30% reduction in thoracoabdominal movement or airflow as compared to baseline, and with at least a 4% oxygen desaturation;

(d) Moderate and severe sleepiness per "Sleep-Related Breathing Disorders in Adults: Recommendations for Syndrome Definition and Measurement Techniques in Clinical Research: The Report of an American Academy of Sleep Medicine Task Force" published in Sleep, Volume 22, Number 5, 1999:

(A) "Moderate: Unwanted sleepiness or involuntary sleep episodes occur during activities that require some attention. Examples include uncontrollable sleepiness that is likely to occur while attending activities such as concerts, meetings or presentations. Symptoms produce moderate impairment of social or occupational function";

(B) Severe: Unwanted sleepiness or involuntary sleep episodes occur during activities that require more active attention. Examples include uncontrollable sleepiness while eating, during conversation, walking or driving. Symptoms produce marked impairment in social or occupational function".

(3) Polysomnography:

(a) For the purpose of this rule, polysomnography must be performed in an attended, facility-based sleep study laboratory, and not in the home or in a mobile facility. These labs must be qualified providers of Medicare services and comply with all applicable state regulatory requirements; and,

(b) Polysomnographic studies must not be performed by a DME provider. This prohibition does not extend to the results of studies conducted by hospitals certified to do such tests.

(4) Initial Coverage:

(a) A single-level continuous positive airway pressure (CPAP) device (E0601) may be covered if the client has a diagnosis of a breathing-related sleep disorder (obstructive sleep apnea, central apnea, mixed apnea or obstructive sleep apnea-hypopnea syndrome). The polysomnogram must support:

(A) An Apnea-Hypopnea Index (AHI) > 10 per hour; and

(B) An oxygen saturation related to an apneic or hypopneic event which is less than 90%.

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(b) A single-level continuous positive airway pressure (CPAP) device (E0601) may be covered if the client has a diagnosis of upper airway resistance syndrome (UARS) and the following criteria are met:

(A) An arousal index > 15; and

(B) Significant excessive daytime sleepiness as defined by any of the following:

(i) Epworth sleepiness scale > 10; or

(ii) History of moderate or severe sleepiness; or

(iii) Multiple Sleep Latency Test (MSLT) with a mean sleep latency < 8.

(c) A three-month rental period is required for CPAP prior to purchase.

(5) Continued Coverage Beyond the First Three Months of Therapy: Ongoing rental beyond the first three months is an option in lieu of purchase if medically appropriate and cost effective.

(6) For a client using a CPAP prior to Medicaid enrollment, and, with recent, supportive documentation from the treating practitioner indicative of effective treatment with a CPAP device, coverage criteria in this rule may be waived.

(7) Payment Authorization: A CPAP device and related accessories may be dispensed without prior authorization. The provider is still responsible to ensure all rule requirements are met. Payment authorization is required prior to submitting claims and will be given once all required documentation has been received and any other applicable rule requirements have been met. Payment authorization is obtained from the same authorizing authority as specified in 410-122-0040.

(8) Documentation:

(a) Initial Coverage: Prior to the third date of service, submit the following documentation:

(A) Summary of events from a recent technician-attended, facility-based polysomnogram, if required; and

(B) Any other medical documentation that supports indications of coverage.

(b) Continued Coverage Beyond the First Three Months of Therapy: No sooner than the 61st day after initiating therapy and prior to the fourth date of service, submit documentation from the treating practitioner that the client is continuing to effectively use the CPAP device.

(9) Accessories:

(a) Accessories used with an E0601 device are covered when the coverage criteria for the device are met; and,

(b) Accessories are separately reimbursable at the time of initial issue and when replaced; and,

(c) Either a non-heated (E0561) or heated (E0562) humidifier is covered when ordered by the treating physician for use with a covered E0601 device.

(10) Miscellaneous:

(a) If there is discontinuation of usage of an E0601 device at any time, the provider is expected to ascertain this, and stop billing for the equipment and related accessories and supplies.

(b) For auto-titrating CPAP devices, use HCPCS code E0601.

(c) Products must be coded as published by SADMERC's Product Classification List for CPAP Systems and Respiratory Assist Devices.

(11) Table 122-0202 [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 46-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 76-2004, f. 9-30-04, cert. ef. 10-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

410-122-0203

Oxygen and Oxygen Equipment

(1) Children (under age 21):

(a) Coverage Criteria: Prescribing practitioner must determine medical appropriateness;

(b) Documentation: DME providers must retain documentation of medical appropriateness from prescribing practitioner.

(2) Adults – Coverage Criteria:

(a) Home oxygen therapy is covered only if all of the following conditions are met:

(A) The treating prescribing practitioner has determined that the client has a severe lung disease or hypoxia-related symptoms that might be expected to improve with oxygen therapy, and;

(B) The client's blood gas study meets the criteria stated below, and;

(C) The qualifying blood gas study was performed by a prescribing practitioner or by a qualified provider or supplier of laboratory services, and;

(D) The qualifying blood gas study was obtained under the following conditions:

(i) If the qualifying blood gas study is performed during an inpatient hospital stay, the reported test must be the one obtained closest to, but no earlier than two days prior to the hospital discharge date; or

(ii) If the qualifying blood gas study is not performed during an inpatient hospital stay, the reported test must be performed while the client is in a chronic stable state – i.e., not during a period of acute illness or an exacerbation of their underlying disease;

(E) Alternative treatment measures have been tried or considered and deemed clinically ineffective.

(b) Oxygen therapy is not covered for the following conditions:

(A) Angina pectoris in the absence of hypoxemia. This condition is generally not the result of a low oxygen level in the blood and there are other preferred treatments;

(B) Dyspnea without cor pulmonale or evidence of hypoxemia;

(C) Severe peripheral vascular disease resulting in clinically evident desaturation in one or more extremities but in the absence of systemic hypoxemia. There is no evidence that increased PO₂ will improve the oxygenation of tissues with impaired circulation;

(D) Terminal illnesses that do not affect the respiratory system;

(c) Back-up equipment for a concentrator is not separately reimbursable by OMAP.

(3) Group I — Initial coverage for clients meeting Group I criteria is limited to 12 months or the length of need specified by the prescribing practitioner, whichever is shorter. Coverage criteria includes any of the following:

(a) An arterial PO₂ at or below 55 mm Hg or an arterial oxygen saturation at or below 88% taken at rest (awake), or;

(b) An arterial PO₂ at or below 55 mm Hg, or an arterial oxygen saturation at or below 88%, taken during sleep for a client who demonstrates an arterial PO₂ at or above 56 mm Hg or an arterial oxygen saturation at or above 89% while awake, or;

(c) A decrease in arterial PO₂ more than 10 mm Hg, or a decrease in arterial oxygen saturation more than 5% taken during sleep associated with symptoms or signs reasonably attributable to hypoxemia (e.g., cor pulmonale, "P" pulmonale on EKG, documented pulmonary hypertension and erythrocytosis), or;

(d) An arterial PO₂ at or below 55 mm Hg or an arterial oxygen saturation at or below 88%, taken during exercise for a client who demonstrates an arterial PO₂ at or above 56 mm Hg or an arterial oxygen saturation at or above 89% during the day while at rest. In this case, oxygen is provided for during exercise if it is documented that the use of oxygen improves the hypoxemia that was demonstrated during exercise when the client was breathing room air.

(4) Group II — Initial coverage for clients meeting Group II criteria is limited to three months or the length of need specified by the prescribing practitioner, whichever is shorter. Coverage criteria include the presence of:

(a) An arterial PO₂ of 56-59 mm Hg or an arterial blood oxygen saturation of 89% at rest (awake), during sleep, or during exercise (as described under Group I criteria), and;

(b) Any of the following:

(A) Dependent edema suggesting congestive heart failure, or;

(B) Pulmonary hypertension or cor pulmonale, determined by measurement of pulmonary artery pressure, gated blood pool scan, echocardiogram, or "P" pulmonale on EKG (P wave greater than 3 mm in standard leads II, III, or AVF), or;

(C) Erythrocythemia with a hematocrit greater than 56%.

(5) Group III — Home use of oxygen is presumed not medically appropriate for clients with arterial PO₂ levels at or above 60 mm Hg, or arterial blood oxygen saturation at or above 90%.

(6) Blood Gas Study:

(a) The qualifying blood gas study:

(A) Must be performed by a CLIA (Clinical Laboratory Improvement Amendments) certified laboratory. A supplier is not considered a qualified provider or a qualified laboratory for purposes of this policy;

(B) May not be paid for by any supplier. This prohibition does not extend to blood gas studies performed by a hospital certified to do such tests;

(C) May be performed while the client is on oxygen as long as the reported blood gas values meet the Group I or Group II criteria;

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(b) For Initial Certifications, the blood gas study reported on the Certificate of Medical Necessity (CMN) or reasonable facsimile, must be the most recent study obtained prior to the Initial Date indicated in Section A of the CMN and this study must be obtained within 30 days prior to that Initial Date;

(c) For clients initially meeting Group I criteria:

(A) The most recent blood gas study prior to the thirteenth month of therapy must be reported on the Recertification CMN;

(B) If the estimated length of need on the Initial CMN is less than lifetime and the prescribing practitioner wants to extend coverage, a repeat blood gas study must be performed within 30 days prior to the date of the Revised Certification.

(d) For clients initially meeting Group II criteria:

(A) The most recent blood gas study which was performed between the 61st and 90th day following Initial Certification must be reported on the Recertification CMN. When a qualifying test is not obtained between the 61st and 90th day of home oxygen therapy, but the client continues to use oxygen and a test is obtained at a later date, coverage would resume beginning with the date of that test if that test meets Group I or II criteria;

(B) If the estimated length of need on the Initial CMN is less than lifetime and the prescribing practitioner wants to extend coverage, a repeat blood gas study must be performed within 30 days prior to the date of the Revised Certification.

(e) For any Revised CMN, the blood gas study reported on the CMN must be the most recent test performed prior to the revised date;

(f) When both arterial blood gas (ABG) and oximetry tests have been performed on the same day under the same conditions (i.e., at rest/awake, during exercise, or during sleep), only report the ABG PO₂ on the CMN. If the ABG PO₂ result is not a qualifying value, home oxygen therapy is not covered regardless of the oximetry test result;

(g) Oxygen Saturation (Oximetry) Tests — Must not be performed by the DME supplier or anyone financially associated with or related to the DME supplier.

(7) Portable Oxygen Systems:

(a) A portable oxygen system is covered if the client is mobile within the home and the qualifying blood gas study was performed while at rest (awake) or during exercise;

(b) If the only qualifying blood gas study was performed during sleep, portable oxygen is not covered;

(c) If coverage criteria are met, a portable oxygen system is usually separately payable in addition to the stationary system.

(8) Standby Oxygen: Oxygen PRN or oxygen as needed is not covered.

(9) Topical Oxygen: Oxygen for topical use is not covered.

(10) Documentation:

(a) Certificate of Medical Necessity (CMN) is a required documentation to support the medical indication;

(b) The Certificate of Medical Necessity (CMN) form for home oxygen is CMS form 484. This form is used for initial certification, recertification, and changes in the oxygen prescription. This form or other documentation of medical appropriateness must be reviewed and signed by the treating prescribing practitioner and kept on file by the DME provider;

(c) Initial CMN is required:

(A) Prior to billing; provider (supplier or vendor) shall keep documentation on file showing their communication with prescriber to obtain CMN prior to delivery;

(B) If more than 3 months pass between the "initial date" of the CMN or the time a CMN is completed and signed by the physician, and the item being ordered is delivered to client, a new completed and signed CMN is required;

(C) The blood gas study reported on the initial CMN must be the most recent study obtained prior to the Initial Date and this study must be obtained within 30 days prior to that Initial Date;

(D) When there has been a change in the client's condition that has caused a break in medical appropriateness of at least 60 days plus whatever days remain in the rental month during which the need for oxygen ended. This indication does not apply if there was just a break in billing because the client was in a hospital, nursing facility, or hospice, but the client continued to need oxygen during that time;

(E) When the client initially qualified in Group II, repeat blood gas studies were not performed between the 61st and 90th day of coverage, but a qualifying study was subsequently performed. The initial date on this new CMN may not be any earlier than the date of the subsequent qualifying blood gas study;

(d) Recertification CMN is required:

(A) Three months after Initial Certification — if oxygen test results on the Initial Certification are in Group II. The blood gas study reported must be the most recent study, which was performed between the 61st and 90th day following the Initial Date;

(B) 12 months after Initial Certification — if oxygen test results on the Initial Certification are in Group I. The blood gas study reported must be the most recent blood gas study prior to the thirteenth month of therapy. This CMN also establishes lifetime.

(e) Revised CMN is required:

(A) When a portable oxygen system is added subsequent to Initial Certification of a stationary system. In this situation, there is no requirement for a repeat blood gas study unless the initial qualifying study was performed during sleep, in which case a repeat blood gas study must be performed while the client is at rest (awake) or during exercise within 30 days prior to the Revised Date;

(B) When the length of need expires — if the prescribing practitioner specified less than lifetime length of need on the most recent CMN. In this situation, a revised blood gas study must be performed within 30 days prior to the Revised Date;

(C) When there is a new treating prescribing practitioner but the oxygen order is the same. In this situation, there is no requirement for a repeat blood gas study;

(D) If there is a new supplier, that supplier must obtain a new CMN. It would be considered a Revised CMN;

(E) Submission of a Revised CMN does not change the Recertification schedule specified above;

(F) If the indications for a Revised CMN are met at the same time that a Recertification CMN is due, file the CMN as a Recertification CMN.

(f) New Order Required: In the following situations, a new order must be obtained and kept on file by the supplier, but neither a new CMN nor a repeat blood gas study are required:

(A) Prescribed maximum flow rate changes but remains within one of the following categories:

(i) Less than 1 LPM (Liters Per Minute);

(ii) 1-4 LPM;

(iii) Greater than 4 LPM.

(B) Change from one type of system to another (i.e., concentrator, liquid, gaseous).

(11) Oxygen users before March 1, 1991, will continue to receive services and are not subject to the above criteria.

(12) For client entering OMAP FFS (Fee-For-Service) from either Fully Capitated Health Plan (FCHP), Managed Care Organization (MCO/HMO/Health Plan), ASO (Administrative Service Organization), PCO (Physician Care Organization) or from non-OMAP FFS:

(a) An initial CMN must be obtained by provider (supplier or vendor), however the blood gas study on the initial CMN does not have to be obtained within 30 days prior to the initial date, but must be the most recent study obtained while the patient was either in the Fully Capitated Health Plan (FCHP), Managed Care Organization (MCO/HMO/Health Plan), ASO (Administrative Service Organization), PCO (Physician Care Organization) or from non-OMAP FFS under the testing guideline specified in sections (3) through section (7) of this rule;

(b) Provider (supplier or vendor) must follow the requirement for recertification and revised CMN if that applies per section (7) of this rule.

(13) Procedure Codes — Table 122-0203. [Table not included. See ED. NOTE.]

[ED. NOTE: Table referenced is available from the agency.]

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Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 76-2003, f. & cert. ef. 10-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

410-122-0204

Nebulizer

(1) Indications and Limitations of Coverage:

(a) For adults, Medicare criteria must be met.

(b) A large volume nebulizer (A7017), related compressor (E0565 or E0572), and water or saline (A4217 or A7018) are covered when it is medically appropriate to deliver humidity to a patient with thick, tenacious secretions, who has cystic fibrosis, bronchiectasis, a tracheostomy, or a tracheobronchial stent. Combination code E0585 will be covered for the same indications.

(c) A battery powered compressor (E0571) is rarely medically appropriate. If this compressor is provided without accompanying documentation

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which justifies its medical appropriateness, and the coverage criteria for code E0570 are met, payment will be based on the allowance for the least costly medically acceptable alternative, E0570.

(d) Other uses of compressors/generators will be considered individually on a case by case basis, to determine their medical appropriateness.

(2) Accessories:

(a) A large volume pneumatic nebulizer (E0580) and water or saline (A4217 or A7018) are not separately payable and should not be separately billed when used for clients with rented home oxygen equipment.

(b) A non-disposable unfilled nebulizer (A7017 or E0585) filled with water or saline (A4217 or A7018) by the client/caregiver is an acceptable alternative.

(c) Kits and concentrates for use in cleaning respiratory equipment are not covered.

(d) Accessories are separately payable if the related aerosol compressor and the individual accessories are medically appropriate. The following table lists the compressor/generator which is related to the accessories described. Other compressor/generator/accessory combinations are not covered.

Compressor/Generator (Related Accessories) [Table not included. See ED. NOTE.]

(e) The following table lists the usual maximum frequency of replacement for accessories. Claims for more than the usual maximum replacement amount will be denied as not medically appropriate unless the claim is accompanied by documentation, which justifies a larger quantity in the individual case. [Table not included. See ED. NOTE.]

(f) Code A7003, A7005, and A7006 include the lid, jar, baffles, tubing, T-piece and mouthpiece. In addition, code A7006 includes a filter.

(g) Code A7004 includes only the lid, jar and baffles.

(h) Code A7012 describes a device to collect water condensation, which is placed in line with the corrugated tubing, used with a large volume nebulizer.

(i) Code E0585 is used when a heavy-duty aerosol compressor (E0565), durable bottle type large volume nebulizer (A7017), and immersion heater (E1372) are provided at the same time. If all three items are not provided initially, the separate codes for the components would be used for billing. Code A7017 is billed for a durable, bottle type nebulizer when it is used with a E0572 compressor or a separately billed E0565 compressor. Code A7017 would not be separately billed when an E0585 system was also being billed. Code E0580 (Nebulizer, durable, glass or autoclavable plastic, bottle type, for use with regulator or flow meter) describes the same piece of equipment as A7017, but should only be billed when this type of nebulizer is used with a client-owned oxygen system.

(3) Equipment:

(a) In this policy, the actual equipment (i.e., electrical device) will generally be referred to as a compressor (when nebulization of liquid is achieved by means of air flow). The term nebulizer is generally used for the actual chamber in which the nebulization of liquid occurs and is an accessory to the equipment. The nebulizer is attached to an aerosol compressor in order to achieve a functioning delivery system for aerosol therapy.

(b) Code E0565 describes an aerosol compressor, which can be set for pressures above 30 psi at a flow of 6-8 L/m and is capable of continuous operation.

(c) A nebulizer with compressor (E0570) is an aerosol compressor, which delivers a fixed, low pressure and is used with a small volume nebulizer. It is only AC powered.

(d) A portable compressor (E0571) is an aerosol compressor, which delivers a fixed, low pressure and is used with a small volume nebulizer. It must have battery or DC power capability and may have an AC power option.

(e) A light duty adjustable pressure compressor (E0572) is a pneumatic aerosol compressor which can be set for pressures above 30 psi at a flow of 6-8 L/m, but is capable only of intermittent operation.

(4) Table 122-0204 [Table not included. See ED. NOTE.]

[ED. NOTE: Table referenced is available from the agency.]

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Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

410-122-0208

Suction Pumps

(1) Indications and Limitations of Coverage:

(a) Use of a home model respiratory suction pump may be covered for a client who has difficulty raising and clearing secretions secondary to:

(A) Cancer or surgery of the throat or mouth; or

(B) Dysfunction of the swallowing muscles; or

(C) Unconsciousness or obtunded state; or

(D) Tracheostomy; or

(E) Neuromuscular conditions.

(b) When a respiratory suction pump (E0600) is covered, tracheal suction catheters are separately payable supplies. In most cases, in the home setting, sterile catheters are medically appropriate only for tracheostomy suctioning. Three suction catheters per day are covered for medically appropriate tracheostomy suctioning, unless additional documentation is provided. When a tracheal suction catheter is used in the oropharynx, which is not sterile, the catheter can be reused if properly cleansed and/or disinfected. In this situation, the medical appropriateness for more than three catheters per week requires additional documentation.

(c) Sterile saline solution (A4216, A4217) may be covered and separately payable when used to clear a suction catheter after tracheostomy suctioning. It is not usually medically appropriate for oropharyngeal suctioning. Saline used for tracheal lavage is not covered.

(d) Supplies (A4628) are covered and are separately payable when they are medically appropriate and used with a medically appropriate suction pump (E0600) in a covered setting.

(e) When a suction pump (E0600) is used for tracheal suctioning, other supplies (e.g., cups, basins, gloves, solutions, etc.) are included in the tracheal care kit code, A4625 (see OAR 410-122-0209 for details). When a suction pump is used for oropharyngeal suctioning, these other supplies are not medically appropriate;

(f) The suction device must be appropriate for home use without technical or professional supervision. Those using the suction apparatus must be sufficiently trained to adequately, appropriately and safely use the device.

(2) A client's medical record must reflect the need for the supplies dispensed and billed. The medical record must be kept on file by the DME provider and made available to OMAP upon request.

(3) A portable or stationary home model respiratory suction pump (E0600) is an electric aspirator designed for oropharyngeal and tracheal suction.

(4) A portable or stationary home model gastric suction pump (E2000) is an electric aspirator designed to remove gastrointestinal secretions.

(5) A tracheal suction catheter is a long, flexible catheter.

(6) An oropharyngeal catheter is a short, rigid (usually) plastic catheter of durable construction.

(7) Code E0600 must not be used for a suction pump used with gastrointestinal tubes.

(8) Code E2000 must be used for a suction pump used with gastrointestinal tubes.

(9) Providers should contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) for guidance on the correct coding of these items.

(10) When billing for quantities of supplies greater than those described in the policy as the usual maximum amounts, there must be clear documentation in the client's medical records corroborating the medical appropriateness for the higher utilization. OMAP may request copies of the client's medical records that corroborate the order and any additional documentation that pertains to the medical appropriateness of items and quantities billed.

(3) Table 122-0208. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 76-2003, f. & cert. ef. 10-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

410-122-0209

Tracheostomy Care Supplies

(1) Indications and Coverage: For a client following an open surgical tracheostomy which has been open or is expected to remain open for at least three months.

(2) Documentation: A prescription for tracheal equipment which is signed by the prescribing practitioner must be kept on file by the DME supplier. The prescribing practitioner's records must contain information which supports the medical appropriateness of the item ordered.

(3) Procedure Codes – Table 122-0209. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

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Stats. Implemented: ORS 414.065

Hist.: HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

410-122-0210

Ventilators

(1) Indications and limitations of coverage:

(a) Mechanical ventilatory support may be provided to a client for the purpose of life support during therapeutic support of suboptimal cardiopulmonary function, or therapeutic support of chronic ventilatory failure;

(b) A ventilator may be covered for treatment of neuromuscular diseases, thoracic restrictive diseases, and chronic respiratory failure consequent to chronic obstructive pulmonary disease. This includes both positive and negative pressure types.

(2) A primary ventilator may be covered if supporting documentation indicates:

(a) A client is unable to be weaned from the ventilator or is unable to be weaned from use at night; or

(b) Alternate means of ventilation were used without success; or

(c) A client is ready for discharge and has been on a ventilator more than 10 days.

(d) E0450, E0460, E0461 or E0472 may be covered if:

(A) A client has no respiratory drive either due to paralysis of the diaphragm or a central brain dysfunction; or

(B) A client has a stable, chronic condition with no orders to wean from the ventilator; or

(C) A client has had a trial with blood gases and has no signs or symptoms of shortness of breath or increased work of breathing; or

(D) A client has uncompromised lung disease.

(e) E0463 or E0464 may be covered if supporting documentation indicates:

(A) A client has chronic lung disease where volume ventilation may further damage lung tissue; or

(B) A client has a compromised airway or musculature and has respiratory drive and a desire to breathe; or,

(C) A client will eventually be weaned from the ventilator; or,

(D) A client has compromised respiratory muscles from muscular dystrophies or increased resistance from airway anomalies or scoliosis conditions.

(3) A backup ventilator may be covered if supporting documentation indicates:

(a) The client is more than 60 minutes from the nearest hospital or a backup ventilator and has no documented spontaneous respirations; or,

(b) Documentation supports medical appropriateness; or

(c) The client is transported frequently with a portable ventilator, and the ventilator is not a portable model; or

(d) The primary ventilator is used at maximum performance with high pressure and rate.

(4) Rental fee:

(a) The rental fee for the ventilator is all-inclusive of any equipment, supplies, services, including respiratory therapy (respiratory care) services, routine maintenance and training necessary for the effective use of the ventilator; and,

(b) The ventilator provider must provide 24-hr. emergency coverage, including an emergency telephone number; and

(c) The client must have a telephone or reasonable access to one.

(5) Payment authorization: Prior authorization is not required when E0450, E0460, E0461 or E0472 is dispensed as the primary ventilator. The provider is responsible to ensure all rule requirements are met. Payment authorization is required prior to the second date of service and before submitting claims. Payment authorization will be given once all required documentation has been received and any other applicable rules and criteria have been met. Payment authorization is obtained from the same authorization authority as specified in 410-122-0040.

(6) Prior authorization:

(A) Prior authorization is required for a backup ventilator; and,

(B) Reimbursement for a backup ventilator is paid at 50% of the usual charge, the Office of Medical Assistance program's maximum allowable rate, or the manufacturer's suggested retail price, whichever is the lowest.

(7) Documentation: For services requiring payment or prior authorization, submit documentation that supports requirements found in this rule. Table 122-0210 [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 76-2004, f. 9-30-04, cert. ef. 10-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

410-122-0375

Walkers

(1) Indications and Limitations of Coverage:

(a) A standard walker (E0130, E0135, E0141, E0143) and related accessories are covered if both of the following criteria are met:

(A) When prescribed by a treating practitioner for a client with a medical condition impairing ambulation and there is a potential for increasing ambulation; and

(B) When there is a need for greater stability and security than provided by a cane or crutches.

(b) For an adult gait trainer, use the appropriate walker code. If a gait trainer has a feature described by one of the walker attachment codes (E0154-E0157), that code may be separately billed.

(c) A heavy duty walker (E0148, E0149) is covered for clients who meet coverage criteria for a standard walker and who weigh more than 300 pounds.

(d) A heavy duty, multiple braking system, variable wheel resistance walker (E0147) is covered for clients who meet coverage criteria for a standard walker and who are unable to use a standard walker due to a severe neurologic disorder or other condition causing the restricted use of one hand.

(e) When a walker with an enclosed frame (E0144) is dispensed to a client, documentation must support why a standard folding wheeled walker, E0143, was not provided as the least costly medically appropriate alternative.

(f) Enhancement accessories of walkers are noncovered.

(g) Leg extensions (E0158) are covered only for patients six feet tall or more. (2) Coding Guidelines

(a) A wheeled walker (E0141, E0143, E0149) is one with either two, three or four wheels. It may be fixed height or adjustable height. It may or may not include glide-type brakes (or equivalent). The wheels may be fixed or swivel.

(b) A glide-type brake consists of a spring mechanism (or equivalent) which raises the leg post of the walker off the ground when the patient is not pushing down on the frame.

(c) Code E0144 describes a folding wheeled walker which has a frame that completely surrounds the patient and an attached seat in the back.

(d) A heavy duty walker (E0148, E0149) is one which is labeled as capable of supporting patients who weigh more than 300 pounds. It may be fixed height or adjustable height. It may be rigid or folding.

(e) Code E0147 describes a 4-wheeled, adjustable height, folding-walker that has all of the following characteristics:

(A) Capable of supporting patients who weigh greater than 350 pounds,

(B) Hand operated brakes that cause the wheels to lock when the hand levers are released,

(C) The hand brakes can be set so that either or both can lock both wheels,

(D) The pressure required to operate each hand brake is individually adjustable,

(E) There is an additional braking mechanism on the front crossbar,

(F) At least two wheels have brakes that can be independently set through tension adjustability to give varying resistance.

(f) The only walkers that may be billed using code E0147 are those products listed in the Product Classification List on the SADMERC web site.

(g) An enhancement accessory is one which does not contribute significantly to the therapeutic function of the walker. It may include, but is not limited to style, color, hand operated brakes (other than those described in code E0147), or basket (or equivalent).

(h) A4636, A4637, and E0159 are only used to bill for replacement items for covered, patient-owned walkers. Codes E0154, E0156, E0157, and E0158 can be used for accessories provided with the initial issue of a walker or for replacement components. Code E0155 can be used for replacements on covered, patient-owned wheeled walkers or when wheels

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are subsequently added to a covered, patient-owned nonwheeled walker (E0130, E0135). Code E0155 cannot be used for wheels provided at the time of, or within one month of, the initial issue of a nonwheeled walker.

(i) Hemi-walkers must be billed using code E0130 or E0135, not E1399.

(j) A gait trainer is a term used to describe certain devices that are used to support a client during ambulation.

(k) Column II code is included in the allowance for the corresponding Column I code when provided at the same time and must not be billed separately at the time of billing the Column I code. [Table not included. See ED. NOTE.]

(l) Providers should contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) for guidance on the correct coding of these items.

(3) Documentation: An order for each item billed must be signed and dated by the treating practitioner, kept on file by the DME provider, and made available to OMAP upon request. The treating practitioner's records must contain information which supports the medical appropriateness of the item ordered, including height and weight.

(4) Table 122-0375. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

410-122-0420

Hospital Bed Accessories

(1) Table 122-0420. [Table not included. See ED. NOTE.]

(2) Trapeze Bars:

(a) Indications and Coverage: Trapeze bars are indicated when client needs this device to sit up because of respiratory condition, to change body position for other medical reasons, or to get in or out of bed;

(b) Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner must be kept on file by the DME provider;

(c) See Table 122-0420 for procedure codes. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

410-122-0590

Patient Lifts

(1) Indications and Coverage — A lift is covered if transfer between bed and a chair, wheelchair, or commode requires the assistance of more than one person and, without the use of a lift, the client would be bed confined.

(2) A sling or seat for a client lift may be covered as an accessory when ordered as a replacement for the original equipment item.

(3) Procedure Codes:

(A) E0621 — Sling or seat, client lift, canvas or nylon:

(a) The Office of Medical Assistance Programs (OMAP) will purchase;

(B) Prior authorization (PA) required;

(C) Not covered at the same time as E0630 .

(b) E0630 — Client lift, hydraulic with seat or sling:

(A) OMAP will purchase;

(B) OMAP will rent;

(C) OMAP will repair;

(D) PA required;

(E) Item considered purchased after 16 months of rent.

(c) E0639 — Patient lift, moveable from room to room with disassembly and reassembly, includes all components/accessories

(d) E0640 — Patient lift, fixed system, includes all components/accessories:

(A) OMAP will purchase;

(B) OMAP will rent;

(C) OMAP will repair;

(D) PA required;

(E) Item considered purchased after 16 months of rent or when purchase price is reached, whichever is the lesser.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

410-122-0625

Surgical Dressing

Procedure Codes — Table 122-0625. [Table not included. See ED.

NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

410-122-0660

Orthotics and Prosthetics

(1) Indications and Coverage:

(a) All of the orthotic and prosthetic "L" codes and any temporary "S" or "K" codes have been removed from the rules except for:

(A) OAR 410-122-0470 Supports and Stockings;

(B) OAR 410-122-0255 External Breast Prosthesis; and

(C) OAR 410-122-0680 Facial Prosthesis.

(b) Use the current **HCPCS Level II Guide** for current codes and descriptions;

(c) For adults, follow Medicare current guidelines for determining coverage;

(d) For children, the prescribing practitioner must determine and document medical appropriateness.

(2) Prior Authorization is required for the following codes:

(a) L1499;

(b) L2999;

(c) L3649;

(d) L3999;

(e) L5999;

(f) L7499;

(g) L8499;

(h) L9900.

(3) Codes Not Covered — Table 122-0660.

(4) Reimbursement:

(a) The hospital is responsible for reimbursing the provider for orthotics and prosthetics provided on an inpatient basis;

(b) Evaluations, office visits, fittings and materials are included in the service provided;

(c) Evaluations will only be reimbursed as a separate service when the provider travels to a client's residence to evaluate the client's need;

(d) All covered orthotic and prosthetic codes are also covered if client resides in a nursing facility except:

(A) L1500;

(B) L1510; and

(C) L1520.

[ED. NOTE: Tables referenced are available from the agency.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05

Adm. Order No.: OMAP 12-2005

Filed with Sec. of State: 3-11-2005

Certified to be Effective: 4-1-05

Notice Publication Date: 1-1-05

Rules Amended: 410-123-1085, 410-123-1260, 410-123-1670

Subject: The Dental Services program administrative rules govern the Office of Medical Assistance Programs' payments for certain services rendered to clients. OMAP permanently amended 410-123-1085, 410-123-1260 and 410-123-1670 as follows: The term "limited" was missing from the language pertaining to the OHP Standard Limited Emergency Dental benefit, causing some confusion regarding intent; added language to clarify intent of service limitations;

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made changes to reflect HIPAA requirements, correct edition of code books, reflect code changes and other "housekeeping" corrections as needed.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-123-1085

Client Copayments for Oregon Health Plus Dental Benefit

(1) OHP Plus: Copayments may be required for certain services:

(a) Clients enrolled in a Dental Care Organization are exempt from copayments. Refer to OAR 410-120-1230 for specific details;

(b) Refer to **Table 123-1260-1** for a list of individual services covered under the OHP Plus Dental Benefit and copayments for individual services.

(2) OHP Standard:

(a) Clients eligible for OHP Standard are exempt from copayments.

Refer to OAR 410-120-1230 for specific details;

(b) Refer to **Table 123-1670-1** for a list of individual services covered under the OHP Standard Limited Emergency Dental Benefit.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 76-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-

03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04;

OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05

410-123-1260

Dental Exams, Diagnostic and Procedural Services

(1) Refer to Table 123-1260-1 for information regarding dental services requiring prior authorization and surgical report:

(a) Procedure codes listed in Table 123-1260-1 are subject to change without notification;

(b) Services funded on the Health Services Prioritized List of Health Services may change and not reflected in OARs 410-123 until the following rule change period.

(2) The client's records must include appropriate documentation to support the service and level of care rendered.

(3) Dental services that are not dentally appropriate or are for the convenience of the client is not covered:

(4) Restorative treatments are limited:

(a) When prognosis is unfavorable;

(b) When treatment impractical;

(c) Until rampant caries are arrested; or

(d) A lesser-cost procedure would achieve the same ultimate result.

(5) Exams:

(a) Codes are based on the American Dental Association CDT-5, except where noted for restorations. Refer to the CDT-5 publication for code descriptions;

(b) For services billed that do not require a tooth number or surface, leave blank;

(c) Exams (billed as D0120, D0150, D0160 or D0180) by the same practitioner are payable once every twelve months;

(d) For each emergent episode, use D0140 for the initial exam. Use D0170 for related dental follow-up exams.

(6) Radiographs:

(a) Routine radiographs are limited to once every 12 months, except panoramic (D0330) and intraoral complete series (D0210) which are payable once every five years. The exception to these limitations is if the client is new to the office or clinic and the office or clinic was unsuccessful in obtaining radiographs from the previous dental office or clinic. Supporting documentation outlining the provider's attempts to receive previous records must be included in the client's records. A maximum of six radiographs are payable for any one emergency;

(b) When billing for radiographs, do not use tooth number or tooth surface;

(c) The minimum age for billing code D0210 is six years. For clients under age six, radiographs may be billed separately as follows:

(A) D0220 — once;

(B) D0230 — a maximum of five times;

(C) D0270 — a maximum of twice, or D0272 once.

(d) The minimum standards for payment of intraoral complete services are:

(A) For clients age six through 11, a minimum of 10 periapicals and two bitewings for a total of 12 films;

(B) There is a minimum of 10 periapicals and four bitewings for a total of 14 films for ages 12 and older.

(e) If fees for multiple single radiographs exceed the allowable reimbursement for a full mouth complete series (D0210), the Office of Medical Assistance Programs (OMAP) will pay for complete series;

(f) Bitewing radiographs for routine screening are payable every 12 months;

(g) Payment for routine panoramic films or complete series intraoral radiograph is limited to one every five years. This does not mean that panoramic or complete series intraoral radiographs can both be done within a five-year period. Additional films are covered when medically justified, e.g., fractures;

(h) Payment for some or all-multiple radiographs of the same tooth or area may be denied if OMAP determines the number to be excessive;

(i) Note: When billing additional films (D0230 and D0260), do not use a separate line for each additional film. Use only one line: add up the total additional films being billed and enter this number under the Quantity column, or create a "Q" column, depending on which form you use.

(7) Preventive Services:

(a) Prophylaxis — Limited to once every 12 months. Additional prophylaxis benefit provisions may be available for persons with high risk oral conditions due to disease process, medications or other medical treatments or conditions, severe periodontal disease, rampant caries and/or for persons with disabilities who cannot perform adequate daily oral health care;

(b) Topical Fluoride Treatment (Office Procedure) is limited to once every 12 months. Additional topical fluoride treatments may be available for a client up to a total of 4 treatments within a 12-month period:

(A) Additional topical fluoride provisions may be available for persons with high-risk oral conditions due to disease process, medications, other medical treatments or conditions, or rampant caries;

(B) Who is pregnant with high-risk oral condition limited to periodontal disease or rampant caries;

(C) With physical disabilities that cannot perform adequate daily oral health care;

(D) Who have a developmental disability or other severe cognitive impairment that cannot perform adequate daily oral health care;

(E) Who is six years or younger with high-risk oral health factors.

(c) Sealants:

(A) Sealants are covered for permanent molars only for children 15 or younger;

(B) Limited to one treatment per tooth every five years except for visible evidence of clinical failure.

(d) Space Management — Removable space maintainers will not be replaced if lost or damaged.

(8) Tobacco Cessation:

(a) Use CDT-5 code D1320 on an American Dental Association (ADA) claim form when billing for tobacco cessation services as outlined. Maximum of 10 services within a three-month period;

(b) Follow criteria outlined in OAR 410-130-0190.

(9) Restorations — Amalgam and Composite:

(a) Payment for restorations is limited to the maximum restoration fee of four surfaces per tooth. Refer to American Dental Association Current Dental Terminology for definitions of restorative procedures;

(b) All surfaces must be combined and billed one line per tooth using the appropriate code. For example, tooth #30 has a buccal amalgam and a MOD amalgam — bill MOD, B, using code D2161;

(c) Payment for an amalgam or composite restoration and a crown on the same tooth will be denied;

(d) Payment is made for a surface once in each treatment episode regardless of the number or combination of restorations;

(e) Payment for occlusal adjustment and polishing of the restoration is included in the restoration fee.

(f) Posterior composite restorations will be paid at the same rate as amalgam restorations.

(g) Replacement of posterior composite restorations is limited to once every five years.

(10) Crowns:

(a) Acrylic Heat or Light Cured Crowns — allowed for anterior permanent teeth only;

(b) Prefabricated Plastic Crowns — allowed for anterior teeth only, permanent or primary;

(c) Permanent crowns — allowed for anterior permanent teeth only. Clients must be 16 or older. Radiographs required; history, diagnosis, and treatment plan may be requested;

(d) Payment for crowns for posterior teeth, permanent or primary is limited to stainless steel crowns;

(e) Payment for preparation of the gingival tissue is included in the fee for the crown;

(f) Payment for retention pins is limited to four per tooth;

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(g) Crowns are covered only when there is significant loss of clinical crown and no other restoration will restore function. The following is not covered:

- (A) Endodontic therapy alone (with or without a post) is not covered;
- (B) Aesthetics.

(h) Crown replacement is limited to one every five years per tooth.

Exceptions to this limitation may be made for crown damage due to acute trauma, based on the following factors:

- (A) Extent of crown damage;
- (B) Extent of damage to other teeth or crowns; and
- (C) Extent of impaired mastication.

(i) Crowns will not be covered in cases of advanced periodontal disease or when a poor crown/root ratio exists for any reason.

(11) Endodontics:

(a) Pulp Capping: Direct and indirect pulp caps are included in the restoration fee — no additional payment will be made;

(b) Endodontic Therapy:

(A) Endodontics is covered only if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(B) Retreatment is not covered for bicuspid or molars;

(C) Retreatment is limited to anterior teeth when:

(i) Crown-to-root ratio is 50:50 or better;

(ii) The tooth is restorable without other surgical procedures; or

(iii) If loss of tooth would result in the need for removable prosthodontics,

(B) Separate reimbursement for open-and-drain as a palliative procedure is allowed only when the root canal is not completed on the same date of service, or if the same practitioner or dental practitioner in the same group practice did not complete the procedure;

(C) The client's record must include appropriate documentation to support the services and level of care rendered;

(D) Root canal therapy is not covered for third molars.

(c) Endodontic Therapy on Permanent Teeth — Apexification is limited to a maximum of five treatments on permanent teeth only.

(12) Periodontics:

(a) When billing for quadrants, use Health Insurance Portability and Accountability Act (HIPAA) compliant codes;

(b) D4210 — covered for severe gingival hyperplasia where enlargement of gum tissue occurs that prevents access to oral hygiene procedures, e.g., dilantin hyperplasia;

(c) D4240, D4241 and D4260 — allowed once every three years unless there is a documented medical/dental indication;

(d) D4341 — allowed once every two years. A maximum of two quadrants on one date of service is payable, except in extraordinary circumstances. Quadrants are not limited to physical area, but are further defined by the number of teeth with pockets 5 mm or greater;

(e) D4910 — allowed once every six months. For further consideration of more frequent periodontal maintenance benefits, office records must clearly reflect clinical indication, i.e., chart notes, pocket depths and radiographs;

(f) Records must clearly document the clinical indications for all periodontal procedures, including current pocket depth charting and/or radiographs;

(g) Surgical procedures include six months routine postoperative care;

(h) Note: The Office of Medical Assistance Programs (OMAP) will not reimburse for the following procedures if performed on the same date of service:

- (A) D1110;
- (B) D1120;
- (C) D4210;
- (D) D4220;
- (E) D4260;
- (F) D4341;
- (G) D4355;
- (H) D4910.

(13) Removable Prosthodontics:

(a) Removable cast metal prosthodontics and full dentures are limited to clients 16 or older;

(b) Adjustments to removable prosthodontics during the six-month period following delivery to clients are included in the fee;

(c) Replacement:

(A) Replacement of dentures and partials is limited to once every five years and only if dentally appropriate. This does not imply that replacement

of dentures or partials must be done once every five years, but only when Dentally Appropriate;

(B) The limitation of once every five years applies to the client regardless of Dental Care Organization (DCO) or Fee-for-Service (FFS) enrollment status. This includes clients that move from FFS to DCO, DCO to FFS, or DCO to DCO. For example: a client receives full dentures on February 1, 2000, while FFS and a year later enrolls in a DCO. The client would not be eligible for another full denture until February 2, 2005, regardless of DCO or FFS enrollment;

(C) Replacement of partial dentures with full dentures is payable five years after the partial denture placement. Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene will not warrant replacement.

(d) Relines:

(A) Reline of complete or partial dentures is allowed once every two years;

(B) Exceptions to this limitation may be made under the same conditions warranting replacement;

(C) Laboratory relines are not payable within five months after placement of an immediate denture.

(e) Tissue Conditioning:

(A) Tissue conditioning is allowed once per denture unit in conjunction with immediate dentures;

(B) One tissue conditioning is allowed prior to new prosthetic placement.

(f) Cast Partial Dentures:

(A) Cast partial dentures will not be approved if stainless steel crowns are used as abutments;

(B) Cast partial dentures must have one or more anterior teeth missing or four or more missing posterior teeth per arch with resulting space equivalent to that loss demonstrating inability to masticate. Third molars are not a consideration when counting missing teeth;

(C) Teeth to be replaced and teeth to be clasped are to be noted in the "remarks" section of the form.

(g) Denture Rebase Procedures:

(A) Rebase should only be done if a reline will not adequately solve the problem. Rebase is limited to once every three years;

(B) Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene will not warrant rebasing.

(h) Laboratory Denture Reline Procedures — Limited to once every two years.

(14) Maxillofacial Prosthetics:

(a) For clients enrolled in managed care, maxillofacial prosthetics are to be billed using CPT or HCPCS coding on a CMS-1500 to the client's medical managed care organization (FCHP). Provision of maxillofacial prosthetics is included in the FCHP capitation and is not the DCO's responsibility;

(b) For fee-for-service clients, bill the Office of Medical Assistance Programs (OMAP) using CPT or HCPCS codes on a CMS-1500 listed in Table 123-1260-2. Payment is based on the physician fee schedule.

(15) Oral Surgery:

(a) Oral surgical services performed in a dental office setting do not require prior authorization (PA), and include, but are not limited to, all dental procedures, local anesthesia, surgical postoperative care, radiographs and follow-up visits;

(b) Oral surgical services performed in a dental office setting are billed on an American Dental Association (ADA) dental claim form. For clients enrolled in a Dental Care Organization (DCO), the oral surgical services are the responsibility of the DCO;

(c) Oral surgical services performed in an Ambulatory Surgical Center (ASC), inpatient or outpatient hospital setting and related anesthesia services require PA. Oral surgical procedures directly related to the teeth and supporting structures must be billed on an ADA claim form;

(d) If the services requiring hospital dentistry are the result of a medical condition/diagnosis (i.e., fracture, cancer), use appropriate American Medical Association (AMA) CDT-5 procedure codes and bill procedures on a CMS-1500 claim form. For clients enrolled in a Fully Capitated Health

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Plan (FCHP), the facility charge and anesthesia services are the responsibility of the FCHP. See rule 410-123-1490 Hospital Dentistry for requirements;

(e) All codes listed as By Report require an operative report;

(f) Payment for tooth reimplantation is covered only in cases of traumatic avulsion where there are good indications of success;

(g) Surgical Assistance:

(A) Reimbursement for surgical assistance is restricted to services provided by dentists and physicians;

(B) Surgical assistance will be reimbursed only when the assistant's services qualify as a dental or medical necessity;

(C) Only one surgical assistant will be reimbursed unless clinical justification is submitted for an additional assistant;

(D) Primary surgeons, assistant surgeons, anesthesiologists, and nurse anesthetists not in common practice must bill separately for their services.

(h) Extractions — Includes local anesthesia and routine postoperative care;

(i) Surgical Extractions:

(A) Includes local anesthesia and routine post-operative care;

(B) The following codes are limited to treatment for symptomatic pain, infection, bleeding, or swelling:

(i) D7220;

(ii) D7230;

(iii) D7240;

(iv) D7241 — By Report;

(v) D7250.

(j) Note: The following procedures on the Health Services Commission's (HSC) Prioritized List of Health Services (List) are covered as medical procedures. Bill on a CMS-1500, using CPT coding. If a client is enrolled in a Fully Capitated Health Plan (FCHP) it is the responsibility of the provider to contact the FCHP for any required authorization before the service is rendered:

(A) D7430;

(B) D7431;

(C) D7460;

(D) D7461;

(E) D7810;

(F) D7820;

(G) D7830.

(16) Orthodontia:

(a) Orthodontia services are limited to eligible clients for the ICD-9-CM diagnosis of cleft palate with cleft lip;

(b) Prior authorization (PA) is required for orthodontia exams and records. A referral letter from a physician or dentist indicating diagnosis of cleft palate/lip must be included in the client's record and a copy sent with the PA request;

(c) Documentation in the client's record must include diagnosis, length and type of treatment;

(d) Payment for appliance therapy includes the appliance and all follow-up visits;

(e) Orthodontia treatment for cleft palate/cleft lip is evaluated as two phases. Each phase is reimbursed individually (separately);

(f) Payment for orthodontia will be made in one lump sum at the beginning of each phase of treatment. Payment for each phase is for all orthodontia-related services. If the client transfers to another orthodontist during treatment, or treatment is terminated for any reason, the orthodontist must refund to the Office of Medical Assistance Programs (OMAP) any unused amount of payment, after applying the following formula: Total payment minus \$300.00 (for Banding) multiplied by the percentage of treatment remaining;

(g) The length of the treatment plan from the original request for authorization will be used to determine the number of treatment months remaining;

(h) As long as the orthodontist continues treatment no refund will be required even though the client may become ineligible for medical assistance sometime during the treatment period;

(i) Code:

(A) D8660 — PA required (reimbursement for required orthodontia records is included);

(B) Codes D8010-D8999 — PA required.

(17) Anesthesia:

(a) General anesthesia or IV sedation is to be used only for those clients with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure (D9220, D9221, and D9240);

(b) General anesthesia is paid using D9220 for the first 30 minutes and use D9221 for each additional 15-minute period, up to three hours on the same day of service. When using D9221, use care when entering quantity. Each 15-minute period represents a quantity of one. Enter this number in the quantity column;

(c) Nitrous oxide is paid per date of service, not by time;

(d) IV sedation is paid per date of service;

(e) Oral premedication anesthesia for conscious sedation:

(A) Limited to clients through 12 years of age;

(B) Limited to four times per year;

(C) Monitoring and nitrous oxide included in the fee; and

(D) Use of multiple agents is required to receive payment.

(f) Upon request, providers must submit to the Office of Medical Assistance Programs (OMAP) a copy of their permit to administer anesthesia, analgesia and/or sedation;

(g) Anesthesia — For the purpose of Title XIX and Title XXI, D9630 is limited to those oral medications used during a procedure and is not intended for "take home" medication.

(18) D9430 is limited to three visits per year. Table 123-1260-1, Table 123-1260-2 [Table not printed. See ED. NOTE.]

[ED. NOTE: Tables are available from the Agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; 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 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 3-2003, f. 1-31-03, cert. ef. 2-1-03; 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 12-2005, f. 3-11-05, cert. ef. 4-1-05

410-123-1670

OHP Standard Emergency Dental Benefit

(1) The definition of Dental Emergency is limited to section (2) in this rule for clients eligible for OHP Standard.

(2) The intent of the OHP Standard Limited Emergency Dental benefit is to provide services requiring immediate treatment and is not intended to restore teeth.

(3) Services are limited to those procedures listed in Table 123-1670-1 and are limited to treatment for conditions such as:

(a) Acute infection;

(b) Acute abscesses;

(c) Severe tooth pain; (d) Tooth re-implantation when clinically appropriate; and

(e) Extraction of teeth are limited only to those teeth that are symptomatic.

(4) Hospital Dentistry is not a covered benefit for the OHP Standard population except:

(a) Clients who have a developmental disability or other severe cognitive impairment, with acute situational anxiety and extreme uncooperative behavior that prevents dental care without general anesthesia; or

(b) Clients who have a developmental disability or other severe cognitive impairments and have a physically compromising condition that prevents dental care without general anesthesia.

(5) Any limitations or prior authorization requirements on services listed in OAR 410-123-1260 will also apply to services in the OHP Standard benefit. Table 123-1670-1

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05

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Adm. Order No.: OMAP 13-2005

Filed with Sec. of State: 3-11-2005

Certified to be Effective: 4-1-05

Notice Publication Date: 1-1-05

Rules Amended: 410-125-0220, 410-125-0410

Subject: The Hospital Services program Administrative Rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. OMAP permanently amended 410-125-0410 to clarify intent of policy for readmission to hospitals and 410-125-0220 to reflect technical changes only.

Rules Coordinator: Darlene Nelson—(503) 945-6927

ADMINISTRATIVE RULES

410-125-0220

Services Billed on the Electronic 837I or on the Paper UB-92 and Other Claim Forms

(1) All inpatient and outpatient services provided by the hospital or hospital employees, unless otherwise specified below, are billed on the electronic 837I (837 Institutional claim form) or on the paper UB-92.

(2) Professional staff and other providers: Services provided by other providers or professional staff with whom the hospital has a contract or agreement regarding provision of services and whom the hospital reimburses a salary or a fee are billed on the electronic 837I or paper UB-92 along with other inpatient or outpatient charges if such costs are reported on the hospital's Medicare Cost Report as a hospital cost.

(3) Residents and medical students: Professional services provided by residents or medical students serving in the hospital as residents or students at the time services are provided are reimbursed by OMAP through direct medical education or indirect medical education payments and may not be billed on the electronic 837I or paper UB-92.

(4) Diagnostic and similar services provided by another provider or facility outside the hospital: When diagnostic or short-term services are provided to an inpatient by another provider or facility because the admitting hospital does not have the equipment or facilities to provide all services required and the patient is returned within 24 hours to the admitting hospital, the admitting hospital should add the following charges to the inpatient electronic 837I or paper UB-92 claim:

(a) Charges from the other provider or hospital under the appropriate Revenue Code. The admitting hospital is responsible for reimbursing the other provider or hospital. Office of Medical Assistance Programs (OMAP) will not reimburse the other provider or hospital; and

(b) Charges for transportation to the other facility or provider. These must be billed under Revenue Code 542. No prior authorization of the transport is required. The hospital will arrange for the transport and pay the transportation provider for the transport. OMAP will not reimburse the transportation provider. This is the only instance in which transportation charges can be billed on the electronic 837I or paper UB-92.

(5) Orthotics, prosthetics, durable medical equipment and implants:

(a) When a provider of orthotic or prosthetic devices provides services or materials to an inpatient through an agreement or arrangement with the hospital, the cost of those services will be billed by the hospital on the electronic 837I or the paper UB-92, along with all other inpatient services. The hospital is responsible for reimbursing the provider. Office of Medical Assistance Programs (OMAP) will not reimburse the provider;

(b) Wheelchairs provided to the client for the client's use after discharge from the hospital may be billed separately by the Durable Medical Equipment supplier or by the hospital if the hospital is the supplier.

(6) Pharmaceutical and Home Parenteral/ Enteral Services: All hospital pharmaceutical charges must be billed on the electronic 837I or paper UB-92, except home parenteral and enteral services and medications provided to patients who are in nursing homes:

(a) Home parenteral and enteral services, including home hyperalimentation, Home IV Antibiotics, home IV analgesics, home enteral therapy, home IV chemotherapy, home IV hydration fluids, and other home IV drugs, require prior authorization and must be billed on the Pharmacy Invoice Form in accordance with the rules in the Home Enteral/Parenteral rules (chapter 410 division 148);

(b) Medications provided to clients who are in nursing homes must be billed on the Pharmacy Invoice Form in accordance with the rules in the Pharmaceutical Services rules (chapter 410 division 121).

(7) Dental services: Dental services provided by hospitals are billed on the electronic 837I or paper UB-92. Reimbursement for dental services provided by hospitals is restricted to those identified in the Dental Services rules (chapter 410 division 123 as covered services).

(8) End-stage renal dialysis facilities: Hospitals providing end-stage renal dialysis and free-standing end-stage renal dialysis facilities will bill on the electronic 837I or paper UB-92 as described in these rules and instructions and will be reimbursed at the hospital's interim rate.

(9) Maternity case management:

(a) Hospital clinics may serve as maternity case managers for pregnant clients. The Medical-Surgical rules (chapter 410 division 130) contain information on the scope of services, definition of program terms, procedure codes, and provider qualifications. These services are billed by hospitals on the electronic 837I or paper UB-92; and

(b) Providers must bill using Revenue Code 569.

(10) Home health care services. Hospitals that operate home health care services must obtain a separate provider number and bill for these

services in accordance with the Home Health Care Services rules (chapter 410 division 127).

(11) Hospital operated air and ground ambulance services. A hospital which operates an air or ground ambulance service may apply to OMAP for a provider number as an air or ground ambulance provider. If costs for staff and equipment are reported on the Medicare Cost Report, these costs must be identifiable. OMAP will remove these costs from the Medicare Cost Report in calculating the hospital's cost-to-charge ratio for outpatient services. These services are billed on the electronic 837P (837 Professional) claim form or the paper CMS-1500 in accordance with the rules and restrictions contained in the Medical Transportation rules (chapter 410 division 136).

(12) Supervising physicians providing services in a teaching setting:

(a) Services provided on an inpatient or outpatient basis by physicians who are on the faculty of teaching hospitals may be billed on the electronic 837I or paper UB-92 with other inpatient or outpatient charges only when:

(A) The physician is serving as an employee of the hospital, or receives reimbursement from the hospital for provision of services, during the period of time when services are provided; and

(B) The hospital does not report these services as a direct medical education cost on the Medicare and OMAP cost report.

(b) The services of supervising faculty physicians are not to be billed to OMAP on either the electronic 837P, the paper CMS-1500 or the electronic 837I or paper UB-92 if the hospital elects to report the cost of these professional services as a direct medical education cost on the Medicare and OMAP cost report; and

(c) The services of supervising faculty physicians are billed on the electronic 837P or the paper CMS-1500 if the physician is serving in a private capacity during the period of time when services are provided, i.e., the physician is receiving no reimbursement from the hospital for the period of time during which services are provided. Refer to the Medical-Surgical Services rules (chapter 410 division 130) or additional information on billing on the electronic 837P or the paper CMS-1500.

[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 30-1982, f. 4-26-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 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 48-1984(Temp), f. 11-30-84, ef. 12-1-84; AFS 29-1985, f. 5-22-85, ef. 5-29-85; AFS 44-1985, f. & ef. 7-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 46-1987, f. & ef. 10-1-87; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89; Renumbered from 461-015-0055, 461-015-0130, 461-015-0135; HR 21-1990, f. & cert. ef. 7-9-90; Renumbered from 461-015-0260, 461-015-0290, 461-015-0300, 461-015-0310, 461-015-0320, 461-015-0420, 461-015-0430; HR 42-1991, f. & cert. ef. 10-1-91; Renumbered from 410-125-0280, 410-125-0300, 410-125-0320, 410-125-0340, 410-125-540 & 410-125-560; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 28-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 70-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 13-2005, f. 3-11-05, cert. ef. 4-1-05

410-125-0410

Readmission

(1) A patient whose readmission for surgery or follow-up care is planned at the time of discharge must be placed on leave of absence status, and both admissions must be combined into a single billing. The Office of Medical Assistance Programs (OMAP) will make one payment for the combined service. Examples of planned readmissions include, but are not limited to, situations where surgery could not be scheduled immediately, a specific surgical team was not available, bilateral surgery was planned, or when further treatment is indicated following diagnostic tests but cannot begin immediately.

(2) A patient whose discharge and readmission to the hospital is within fifteen (15) days for the same or related diagnosis must be combined into a single billing. OMAP will make one payment for the combined service.

(3) This rule does not apply to:

(a) Readmissions for an unrelated diagnosis;

(b) Readmissions occurring more than 15 days after the date of discharge;

(c) Readmissions for a diagnosis that may require episodic (a series) acute care hospitalizations to stabilize the medical condition such as, but not limited to: diabetes, asthma, or chronic obstructive pulmonary disease.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 36-1993, f. & cert. ef. 12-1-93; OMAP 11-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 13-2005, f. 3-11-05, cert. ef. 4-1-05

ADMINISTRATIVE RULES

Adm. Order No.: OMAP 14-2005
Filed with Sec. of State: 3-11-2005
Certified to be Effective: 4-1-05
Notice Publication Date: 1-1-05

Rules Amended: 410-129-0070, 410-129-0200, 410-129-0240

Subject: The Speech-language pathology, Audiology, and Hearing Aid Services program administrative rules govern the Office of Medical Assistance Programs' payments for certain services rendered to clients. OMAP permanently amended 410-129-0070 to clarify language related to coverage of hearing aids, speech-language and dysphagia evaluations, and to clarify that cochlear implant batteries are covered and require payment authorization; 410-129-0200 to add a new CPT code; 410-129-0240 to add new CPT codes for cochlear implant batteries.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-129-0070

Limitations

(1) The rules contained in OAR 410-129-0010 – 410-129-0080 and 410-129-0220 also apply to services delivered by home health agencies and by hospital-based therapists in the outpatient setting. They do not apply to services provided to hospital inpatients. Billing and reimbursement for therapy services delivered by home health agencies and hospital outpatient departments is to be in accordance with the rules in their respective provider guides.

(2) Speech Pathology:

(a) All speech pathology services will be performed by a licensed speech pathologist or a graduate student in training or a graduate speech pathologist in the Clinical Fellowship Year being supervised by a licensed speech pathologist. Only therapy and evaluation services rendered on-site are billable under the codes listed in the Speech-Language Pathology, Audiology and Hearing Aid Services provider guide;

(b) Speech pathology therapy treatments may not exceed one hour per day, either group or individual. Treatment must be either group or individual, and cannot be combined in the authorization period;

(c) Therapy records must include:

- (A) Documentation of each session;
- (B) Therapy provided and amount of time spent; and
- (C) Signature of the therapist.

(d) Documentation (progress notes, etc.) must be retained in the provider's records. All report and clinical notes by graduate students in training or graduate speech pathologists in the clinical fellowship year must be countersigned by the supervising licensed speech pathologist;

(e) Services of a graduate student in training or a graduate speech pathologist during the clinical fellowship year, under direct supervision of a licensed speech pathologist are reimbursable to the licensed supervisor under the following conditions:

(A) Supervision must occur on the same premises and the supervisor must be readily accessible to the resident performing the actual service;

(B) Strict supervision requirements adhering to the American Speech-Language-Hearing Association requirements must be followed, which includes a minimum amount of time the supervisor must be physically present during therapy and evaluation time. Therapy is 15 minutes per hour and evaluation time is 30 minutes per hour;

(C) Documentation of the supervisor must clearly indicate her/his level of involvement in the delivery of each service in order to assure quality of care to the client;

(D) Documentation by the graduate student in training or the Clinical Fellow must demonstrate to the satisfaction of the agency that services are medically appropriate in continuing the plan and treatment plan for the client in clear, legible notation.

(f) Services That Do Not Require Payment Authorization:

(A) Two Evaluations of Speech/Language will be reimbursed per calendar year;

(B) Two Evaluations for Dysphagia will be reimbursed per calendar year;

(C) One Evaluation for speech-generating/augmentative communication system or device will be reimbursed per recipient per calendar year;

(D) One Evaluation for voice prosthesis or artificial larynx will be reimbursed per calendar year;

(E) Purchase, repair or modification of electrolarynx;

(F) Supplies for speech therapy will be reimbursed up to two times per calendar year, not to exceed \$5.00 each.

(g) Services That Require Payment Authorization:

(A) All speech pathology therapy treatments;

(B) Speech-generating/augmentative communication system or device, purchase or rental. Rental of a speech-generating/ augmentative communication system or device is limited to one month. All rental fees must be applied to the purchase price;

(C) Repair/modification of a speech-generating/augmentative communication system or device.

(h) Services Not Covered:

(A) Services of a licensed speech pathologist while teaching or supervising students of speech pathology will not be reimbursed;

(B) Maintenance therapy is not reimbursable as described in 410-129-0040.

(3) Audiology and Hearing Aid Dealer Services:

(a) All hearing services will be performed by licensed audiologists or hearing aid dealers;

(b) Reimbursement is limited to one (monaural) hearing aid every five years for adults who meet the following criteria: Loss of 45 decibel (dB) hearing level or greater in two or more of the following three frequencies: 1000, 2000, and 3000 Hertz (Hz) in the better ear;

(c) Adults who meet the criteria above and, in addition, have vision correctable to no better than 20/200 in the better eye, may be authorized for two hearing aids for safety purposes. Submit a vision evaluation with the payment authorization request;

(d) Two (binaural) hearing aids will be reimbursed no more frequently than every three years for children who meet the following criteria:

(A) Pure tone average of 25dB for the frequencies of 500Hz, 1000Hz and 2000Hz; or

(B) High frequency average of 35dB for the frequencies of 3000Hz, 4000Hz and 6000Hz.

(e) An assistive listening device may be authorized for individuals aged 21 or over who are unable to wear, or who cannot benefit from, a hearing aid. An assistive listening device is defined as a simple amplification device designed to help the individual hear in a particular listening situation. It is restricted to a hand-held amplifier and headphones;

(f) Services That Do Not Require Payment Authorization:

(A) One basic audiologic assessment in a calendar year;

(B) One Basic comprehensive audiometry (audiologic evaluation) — per calendar year;

(C) One Hearing aid evaluation/tests/selection — per calendar year;

(D) One Electroacoustic evaluation for hearing aid; monaural — per calendar year;

(E) One Electroacoustic evaluation for hearing aid; binaural — per calendar year;

(F) Hearing aid batteries — maximum of 60 individual batteries per 12 month period. Must meet the criteria for a hearing aid.

(g) Services That Require Payment Authorization:

(A) Hearing aids;

(B) Repair of hearing aids, including ear mold replacement;

(C) Hearing aid dispensing and fitting fees;

(D) Assistive listening devices;

(E) Cochlear implant batteries.

(h) Services Not Covered:

(A) FM systems — vibro-tactile aids;

(B) Earplugs;

(C) Adjustment of hearing aids is included in the fitting and dispensing fee, and is not reimbursable separately;

(D) Aural rehabilitation therapy is included in the fitting and dispensing fee, and is not reimbursable separately;

(E) Tinnitus masker(s).

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 27-1993, f. & cert. ef. 10-1-93; HR 36-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP

36-1999, f. & cert. ef. 10-1-99; OMAP 38-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 39-

2001, f. 9-24-01, cert. e f. 10-1-01; OMAP 14-2005, f. 3-11-05, cert. ef. 4-1-05

410-129-0200

Speech-Language Pathology Procedure Codes

(1) Inclusion of a CPT/HCP/PCS code in the following tables does not imply a code is covered. Refer to OARs 410-141-0480, 410-141-0500, and 410-141-0520 for information on coverage.

(2) Speech Therapy Services. Table 200-1. [Table not included. See ED. NOTE.]

(3) Other Speech Services. Table 200-2. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

ADMINISTRATIVE RULES

Stats. Implemented: ORS 414.065

Hist.: HR 5-1991, f. 1-18-91, cert. ef. 2-1-91; HR 11-1992, f. & cert. ef. 4-1-92; HR 27-1993, f. & cert. ef. 10-1-93; HR 36-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 36-1999, f. & cert. ef. 10-1-99; OMAP 6-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 20-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 10-2002, f. & cert. ef. 4-1-02; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 12-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 14-2005, f. 3-11-05, cert. ef. 4-1-05

410-129-0240

Audiologist and Hearing Aid Procedure Codes

(1) Inclusion of a CPT/HCPCS code on the following tables does not imply that a code is covered. Refer to OARs 410-141-0480, 410-141-0500, and 410-141-0520 for information on coverage.

(2) Audiologist and Hearing Aid Procedure Codes. Table 0240-1 [Table not included. See ED. NOTE.]

(3) Special Otorhinolaryngologic Services codes: These codes only apply to services for cochlear implants. These services include medical diagnosis evaluation by the otology physician. Table 0240-2 [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 5-1991, f. 1-18-91, cert. ef. 2-1-91; HR 11-1992, f. & cert. ef. 4-1-92; HR 27-1993, f. & cert. ef. 10-1-93; OMAP 36-1999, f. & cert. ef. 10-1-99; OMAP 38-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 10-2002, f. & cert. ef. 4-1-02; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 14-2005, f. 3-11-05, cert. ef. 4-1-05

Adm. Order No.: OMAP 15-2005

Filed with Sec. of State: 3-11-2005

Certified to be Effective: 4-1-05

Notice Publication Date: 1-1-05

Rules Amended: 410-131-0120, 410-131-0280

Subject: The Physical and Occupational Therapy Services program administrative rules govern the Office of Medical Assistance Programs' payments for certain services rendered to clients. OMAP permanently amended 410-131-0120 and 410-131-0280 to clarify what services are funded under the Health Services Commission's Prioritized List of Health Services for the Oregon Health Plan.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-131-0120

Limitations

(1) OARs 410-131-0020 through 410-131-0160 also apply to services delivered by home health agencies and by hospital-based therapists in the outpatient setting. They do not apply to services provided to hospital inpatients. Billing and reimbursement for therapy services delivered by home health agencies and hospital outpatient departments are to be in accordance with the rules in their respective provider guides.

(2) Program Information — A licensed occupational or physical therapist, or a licensed occupational or physical therapy assistant under the supervision of a therapist, must be in constant attendance while therapy treatments are performed:

(a) Duration — Therapy treatments must not exceed one hour per day each for occupational and physical therapy;

(b) Maintenance Therapy — Maintenance therapy means the goals and objectives have been reached, or there is no progress toward the goals and objectives, or the therapy does not require the skills of a therapist, and the client, family, foster parents, or caregiver have been taught and can carry out the therapy regimen. Maintenance therapy is not reimbursable;

(c) Modalities — Up to two modalities may be authorized per day of treatment;

(d) Massage therapy, CPT 97124, is limited to two (2) units per day of treatment, and will only be authorized in conjunction with another therapeutic procedure or modality;

(e) Physical Capacity Examinations — Physical capacity examinations are not a part of the Occupational and Physical Therapy program, but may be reimbursed as Administrative Examinations when ordered by the local branch office. See OAR 410 Division 150 for information on Administrative examinations and report billing;

(f) Re-Evaluations — A re-evaluation to reassess or change the treatment plan and retrain the client, family, foster parents, or caregiver is reimbursable;

(g) Splint Fabrication — Supplies and materials for the fabrication of splints must be billed at the acquisition cost, not to exceed \$62.40. Acquisition cost is purchase price plus shipping. Off-the-shelf splints are not included in this service;

(h) Therapy Records — Therapy records must include:

(A) A written order (including type, number and duration of services) and therapy treatment plan signed by the prescribing provider;

(B) Documents, evaluations, re-evaluations and progress notes to support the therapy treatment plan and prescribing provider's written orders for changes in the therapy treatment plan;

(C) Modalities used on each date of service;

(D) Procedures performed and amount of time spent performing the procedures is documented and signed by the therapist;

(E) Documentation of splint fabrication and time spent fabricating the splint.

(i) Training — The therapy treatment plan and regimen will be taught to the client, family, foster parents, or caregiver during the therapy treatments. No extra treatments will be authorized for teaching.

(3) Payment Authorization:

(a) The following services do not require payment authorization for occupational or physical therapy:

(A) Up to two initial evaluations in any 12-month period;

(B) Up to four re-evaluation services in any 12-month period.

(b) All other occupational and physical therapy treatments require payment authorization.

(4) Services Not Covered — The following services are not covered:

(a) Services that are not medically appropriate;

(b) Services that are not paired with a funded diagnosis on the Health Services Commission's Prioritized List of Health Services adopted under OAR 410-141-0520;

(c) Work hardening;

(d) Back school/back education classes;

(e) Hippotherapy;

(f) Durable medical equipment and medical supplies other than those listed in OAR 410-131-0280.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 8-1991, f. 1-25-91, cert. ef. 2-1-91; HR 19-1992, f. & cert. ef. 7-1-92; HR 28-1993, f. & cert. ef. 10-1-93; HR 43-1994, f. 12-30-94, cert. ef. 1-1-95; HR 2-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 8-1998, f. & cert. ef. 3-2-98; OMAP 18-1999, f. & cert. ef. 4-1-99; OMAP 32-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 53-2002, f. & cert. ef. 10-1-02; OMAP 64-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 59-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 15-2005, f. 3-11-05, cert. ef. 4-1-05

410-131-0280

Occupational and Physical Therapy Codes

(1) Occupational therapists and physical therapists should use any of the following codes which are applicable according to their Licensure and Professional Standards.

(2) Inclusion of a CPT/HCPCS code on the following tables does not imply that a code is covered. Refer to OARs 410-141-0480, 410-141-0500, and 410-141-0520 for information on covered services.

(3) Services which do not require payment authorization: Table 280-1.

(4) Services which require payment authorization:

(a) Modalities — need to be billed in conjunction with a therapeutic procedure code;

(b) Supervised — The application of a modality that does not require direct (one-on-one) client contact by the provider. Each individual code in this series may be reported only once for each client encounter: Table 280-2.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 8-1991, f. 1-25-91, cert. ef. 2-1-91; HR 19-1992, f. & cert. ef. 7-1-92; HR 43-1994, f. 12-30-94, cert. ef. 1-1-95; HR 8-1995, f. 3-31-95, cert. ef. 4-1-95; HR 4-1996, f. & cert. ef. 5-1-96; HR 2-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 8-1998, f. & cert. ef. 3-2-98; OMAP 18-1999, f. & cert. ef. 4-1-99; OMAP 32-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 16-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 41-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 53-2002, f. & cert. ef. 10-1-02; OMAP 64-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 14-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 59-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 15-2005, f. 3-11-05, cert. ef. 4-1-05

Adm. Order No.: OMAP 16-2005

Filed with Sec. of State: 3-11-2005

Certified to be Effective: 4-1-05

Notice Publication Date: 1-1-05

Rules Amended: 410-146-0080

Subject: The American Indian/Alaska Native Services program administrative rules govern the Office of Medical Assistance Programs' payment for certain services rendered to clients. 410-146-0080 referred to another OAR with an incorrect OAR number for

ADMINISTRATIVE RULES

OHP Standard rules. OMAP permanently amended 410-146-0080 to correct the OAR reference.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-146-0080

Professional Services

(1) Medical, Diagnostic, Screening, Dental, Vision, Physical Therapy, Occupational Therapy, Podiatry, Mental Health, Alcohol and Drug, Maternity Case Management, Speech, Hearing, or Home Health services are not limited except as directed by the General Rules — Medical Assistance Benefits: Excluded Services and Limitations and the Health Services Commission's (HSC) Prioritized List of Health Services (List) as follows:

(a) Coverage for diagnostic services and treatment for those services funded on the HSC List, and;

(b) Coverage for diagnostic services only, for those conditions that fall below the funded portion of the HSC List;

(c) The date of service determines the appropriate version of the General Rules and the HSC List to determine coverage;

(d) The OHP Standard Benefit Package is a limited benefit package. See OAR 410-120-1210 for details.

(2) American Indian/Alaska Native (AI/AN) Health Care Facilities are eligible under the Memorandum of Agreement (MOA) for reimbursement at the Tribal encounter rate for professional services.

(3) Urban clinics are not eligible, under the MOA, for reimbursement but are eligible to bill for all professional services as outlined in this rule.

(4) AI/AN Health Care Facilities, that have chosen to be reimbursed using the per service payments also known as fee-for-service, do not use the per encounter definitions. However, all services listed in (1) of this rule apply.

(5) Encounter:

(a) An encounter is defined as "A face-to-face contact between a health care professional and an Indian Health Services (IHS) beneficiary eligible for the Medical Assistance Program for the provision of Title XIX/CHIP defined services in an AI/AN Health Care Facility within a 24-hour period ending at midnight, as documented in the client's medical record";

(b) An encounter can occur either within or through the AI/AN Health Care Facility;

(6) The following encounters are reimbursable under the MOA encounter rate, 100% cost based reimbursement or an Urban Tribal Clinic eligible to bill as a Federally Qualified Health Center with or without a 638 designation:

(a) Physicians;

(b) Licensed Physician Assistants;

(c) Nurse Practitioners;

(d) Nurse Midwives;

(e) Dentists;

(f) Pharm D; or

(g) Other health care professionals:

(A) To provide: Medical, Diagnostic, Screening, Dental, Vision, Physical Therapy, Occupational Therapy, Podiatry, Mental Health, Alcohol and Drug, Maternity Case Management, Speech, Hearing, or Home Health Services;

(B) Professional services provided in a hospital setting;

(C) Services outside of the encounter rate include but not limited to Pharmacy, DME, Lab, Radiology, Targeted Case Management, Administrative Examinations, and Medical Transportation. These services are reimbursed under the OMAP fee-for service system;

(D) Effective March 1, 2003, the OHP Standard Benefit has limited services. See OAR 410-120-1235 for detailed list of non-covered services.

(7) Multiple Encounters: Each service must be a distinctly different service in order to meet the criteria for multiple encounters. For example: a medical visit and a dental visit on the same day is considered two distinctly different services.

(8) Similar services, even when provided by two different health care practitioners are not considered multiple encounters. Situations that would not be considered multiple encounters provided on the same date of service include, but are not limited to:

(a) A well child check and an immunization;

(b) A well child check and fluoride varnish application in a medical setting;

(c) A medical encounter with a mental health or addiction diagnosis on the same day as a mental health or addiction encounter;

(d) A mental health and addiction encounter;

(e) Any time a client receives only a partial service with one provider and partial service from another provider it is considered a single encounter.

(9) Medical encounter definitions:

(a) More than one outpatient visit, with a medical professional, within a 24-hour period, for the same diagnosis, constitutes a single encounter. For example: a client comes to the clinic in the morning for an examination. During the examination the client is diagnosed with hypertension. The practitioner prescribes medication and asks the client to return in the afternoon for a blood pressure check;

(b) More than one outpatient visit, with a medical professional, within a 24-hour period, for distinctly different diagnoses, report as two encounters. For example, a client comes to the clinic in the morning for an immunization and in the afternoon falls and breaks an arm. This would be considered multiple medical encounters and can be billed as two encounters. However, a client that comes to the clinic for a prenatal visit in the morning and delivers in the afternoon would not be considered a distinctly different diagnosis and can only be billed as a single encounter;

(c) This does not imply that if a client is seen at a single office visit with multiple problems, that multiple encounters can be billed.

(10) The following services may be considered as multiple encounters when two or more services are provided on the same date of service:

(a) Dental;

(b) Mental Health or Addiction Services — If both services are provided on the same date of service, then it's considered a single encounter. In addition, if the client is also seen for a medical office visit with a mental health or addiction diagnosis, it is considered a single encounter;

(c) Ophthalmologic services — fitting and dispensing of eyeglasses is included in the encounter that the vision exam is performed;

(d) Maternity Case Management (MCM) — When a client has a medical office visit, MCM can only be billed as a multiple encounter when the client is newly diagnosed as pregnant and is referred for MCM assessment or it is determined the client needs nutritional counseling;

(e) Physical or Occupational Therapy (PT/OT) — If this service is also performed on the same date of service as the medical encounter that determined the need for PT/OT, then it would only constitute a single encounter;

(f) Immunizations — if no other medical office visit occurs on the same date of service;

(g) Tobacco cessation if no other medical or addition encounter occurs on the same date of service.

(11) The billing guidelines provided in the AI/AN billing rules for those clinics reimbursed using a per encounter rate methodology are limited to specific CPT/HCPCS codes when reporting an encounter that may not be consistent with national coding standards. This does not apply to ICD-9-CM diagnosis coding. Bill OMAP with the procedure codes indicated in each service category for services included in the AI/AN encounter rate. For services that are not included in the encounter rate or under the MOA please refer to the Services Not Eligible Under the MOA section of the AI/AN billing rules for billing instructions.

(12) When billing for a clinic visit, select the most appropriate CPT/HCPCS procedure code ranges shown in Table 146-0080-1.

(13) It is the HSC's intent to cover reasonable diagnostic services to determine diagnoses on the HSC List, regardless of their placement on the HSC List. Table 146-0080-1; Table 146-0080-2

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00;

OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01;

OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP

68-2003, f. 9-12-03, cert. ef. 10-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 16-

2005, f. 3-11-05, cert. ef. 4-1-05

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Adm. Order No.: OMAP 17-2005

Filed with Sec. of State: 3-11-2005

Certified to be Effective: 4-1-05

Notice Publication Date: 1-1-05

Rules Amended: 410-148-0090

Subject: The Home Enteral/Parenteral and Intravenous Services (EPIV) administrative rules govern the Office of Medical Assistance Programs' payment for certain services rendered to clients. OMAP permanently amended 410-148-0090 to take care of a housekeeping correction for General Rule citation related to OHP Standard benefit package.

Rules Coordinator: Darlene Nelson—(503) 945-6927

ADMINISTRATIVE RULES

410-148-0090

Standard Benefit Package

(1) Some procedure codes/services are not covered for the Standard Benefit Package population. See General Rules 410-120-1210 for additional information.

(2) The OHP Standard benefit package includes limited Home Enteral/Parenteral and IV services:

(a) Drugs that are usually self-administered by the patient such as oral pill form or self-injected medications, are not covered;

(b) Oral nutrition services and supplies are not covered, except when the nutritional supplement meets the criteria specified in 410-148-0260(3), and is the sole source of nutrition for the client;

(c) Nursing assessment and nursing visits must be directly related to administration of the home enteral/parenteral nutrition and intravenous services pursuant to Oregon's Nurse Practices Act (OAR 851-001-0000). Home Health and Private Duty Nursing are not covered services under the Standard benefit package (General Rules 410-120-1210), except nursing assessment and nursing visits under this limited Home Enteral/Parenteral and IV benefit are covered.

Stat. Auth. ORS 409

Stat. Implemented: 414.065

Hist.: OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04;

OMAP 17-2005, f. 3-11-05, cert. ef. 4-1-05

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Adm. Order No.: OMAP 18-2005(Temp)

Filed with Sec. of State: 3-15-2005

Certified to be Effective: 3-18-05 thru 9-1-05

Notice Publication Date:

Rules Adopted: 410-147-0365

Subject: The Federally Qualified Health Center and Rural Health Clinic program rules govern Office of Medical Assistance Programs' (OMAP) payments for products and services provided to clients. OMAP temporarily adopted OAR 410-147-0365 to provide an alternate payment methodology for the obstetrical (OB) care portion of the Prospective Payment System provided by remote rural and frontier Rural Health Clinics and contingent on federal approval of the State Plan Amendment.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-147-0365

Independent Frontier and Remote Rural Health Clinic (RHC) Alternate Payment Methodology (APM) for Obstetrics (OB) Care

(1) Medicare certified independent RHC, as defined below, may be eligible to request an APM payment for professional services for OB care under the Prospective Payment System (PPS) based on December 1, 2004 RHC OB care rates, contingent upon federal approval of the State Plan Amendment. The intent of the APM encounter rate is to maintain access to OB care in frontier and remote rural areas and to compensate eligible clinics for professional costs uniquely associated with OB care equal to PPS rate or higher, not to exceed 100% of reasonable cost.

(2) To be eligible for the APM OB encounter rate, an RHC must be Medicare certified, be independent, must meet all Office of Medical Assistance Programs (OMAP) requirements applicable to an RHC, qualify as either "frontier" or "remote rural" as defined below, and must request to participate in writing pursuant to participation requirements specified in (3) below.

(a) Frontier RHC is defined as:

(A) Located in a frontier county as designated by the Oregon Office of Rural Health; and

(B) Population density of six people per square mile or less; and

(C) The clinic serves Medicaid and uninsured clients.

(b) Remote rural RHC is defined as:

(A) Located in a remote rural service area as designated by the Oregon Office of Rural Health; and

(B) More than 20 miles from a population center of 10,000 or more and is not within a frontier area; and

(C) The location of the clinic is in a community with less than 10,000 residents; and

(D) The community has less than 1 obstetrician per 10,000 population; and

(E) The clinic serves Medicaid and uninsured clients.

(3) If the frontier or remote RHC qualifies under (2) in rule and other requirements outlined by OMAP, the clinic must provide OMAP all

required documentation necessary to qualify for the OB APM encounter rate.

(a) An eligible RHC must submit a written request to OMAP for the OB APM encounter rate. The written request needs to include all documentation required in (5) below.

(b) RHCs that met the requirements in (2) on December 1, 2004 may bill, using the OB APM encounter rate effective December 1, 2004, provided cost documentation required in (5) is provided to OMAP within 30 days of written request for OB APM; if all documentation is not provided within 30 days of the OB APM request, the OB APM effective date will be the date the request and complete supporting documentation is received by OMAP.

(c) RHCs that meet the requirements in (2) after December 1, 2004 may bill, prospectively under the new OB APM encounter rate from the date the written request to participate and the required supporting documentation is received by OMAP, or the date the required documents are received, whichever is later.

(4) Care status changes:

(a) OMAP reserves the right to request periodic review of utilization, cost reporting and to re-evaluate OB care access in a community to determine the continued need to pay an OB APM encounter rate for frontier and remote rural RHCs;

(b) Prior to making any changes in the RHC's status and rates, OMAP will re-evaluate the following:

(A) If OB care access in a community has changed; and

(B) If the RHC no longer meets the requirements for the APM; and

(C) The stability of new providers supplying additional OB care access.

(c) OMAP will give the RHC 90 days notice of change in status and rate;

(d) If OMAP determines that an RHC no longer meets the OB APM requirements, the RHC may request, within 30 days from notification, that OMAP review any additional supporting documentation regarding the determination.

(5) Determining Encounter Rate: The frontier and remote rural RHC requesting an OB APM encounter rate, and meeting the OMAP requirements, shall have its OB care costs carved out from the primary PPS encounter rate as described below. The primary PPS rate for existing clinics would be recalculated subtracting OB direct care costs and placing them in the OB APM calculation. This OB APM encounter rate includes the professional services provided by the RHC associated with pre-natal, delivery (including cesarean section) and post-partum care, up to 60 days post delivery or termination of pregnancy. Qualification for the OB APM encounter rate is not considered a change of scope and the primary PPS encounter rate will only be adjusted by the costs that are moved to the OB APM encounter rate, unless the RHC has never provided OB care prior to enrollment with OMAP. Once the OB APM encounter rate for the RHC is established, the Medicare Economic Index (MEI) adjustment, as required by the PPS, will apply to the OB APM encounter rate.

(a) OMAP will use the information listed below to determine the eligible RHC's initial OB APM encounter rate. First, OMAP will determine the percent of direct care costs associated with OB services provided through the RHC. To determine the percent of direct care costs associated with OB, the clinic must provide the following information for 1999-2000 or the first year OB services were provided with the written request for an OB APM encounter rate:

(A) Total number of clinic encounters;

(B) Total number of OB care encounters including delivery;

(C) Physician salary cost.

(i) Physician cost used in this calculation will be the lesser of the clinic provided physician salary or the national average for family practice with OB care.

(ii) This cost basis is added to the physician payroll taxes (if any) and retirement and benefits.

(D) Nurse salary, payroll taxes, retirement and benefits;

(E) Malpractice premiums for the next two years; and

(F) On-call time.

(b) OMAP will apply the information listed below to determine staff time spent on direct OB care:

(A) Total number of OB care visits divided by the total number of visits;

(B) OB physician cost that is determined by multiplying the OB care percentage of total visits;

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(C) OB nursing cost that is determined by multiplying the combined nursing staff salaries, payroll taxes, retirement and benefits by the OB care percentage;

(D) Malpractice premiums that are based on the average costs for the two years after the date the clinic applies for the APM, as projected by the RHC's malpractice carrier;

(E) Clinics providing physician on-call coverage. The cost of on-call time is calculated by:

(i) Reducing total clinic coverage hours per year by the adjusted clinic daily office hours, further reduced by the OB care percentage; and

(ii) Reduced by physician vacation hours (minimum of 80 hours per year); and

(iii) Calculated at 80 percent of all on-call time; and

(iv) Adjusted on-call hours of coverage, that are multiplied by the fixed rate of \$20.00 per hour.

(c) Indirect costs associated with OB care will not be carved out of the primary PPS encounter rate. However, the percent of OB care services associated with physician and nurse costs will be adjusted in the primary PPS encounter rate to reflect the costs being moved to the OB APM rate.

(d) The RHC is responsible for providing all documentation necessary for OMAP to conduct the calculations described in this rule. Failure to provide necessary documentation with the request for eligibility may result in a delay of the availability of the OB APM encounter rate.

(e) After OMAP has calculated the initial OB APM encounter, including any adjustments to the PPS rate based on the costs covered under the OB alternative payment rate, OMAP will provide the rate information to the RHC.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 18-2005(Temp), f. 3-15-05, cert. ef. 3-18-05 thru 9-1-05

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

Adm. Order No.: PH 4-2005

Filed with Sec. of State: 2-18-2005

Certified to be Effective: 2-18-05

Notice Publication Date: 1-1-05

Rules Adopted: 333-004-0000, 333-004-0010, 333-004-0020, 333-004-0030, 333-004-0040, 333-004-0050, 333-004-0060, 333-004-0070, 333-004-0080, 333-004-0090, 333-004-0100, 333-004-0110, 333-004-0120, 333-004-0130, 333-004-0140, 333-004-0150, 333-004-0160, 333-004-0170, 333-004-0180, 333-004-0190

Subject: Family Planning Expansion Program rules are adopted to standardize provider enrollment, to regulate providers, and implement quality assurance standards. The Family Planning Expansion Program is a Medicaid waiver demonstration project reapproved by the Centers for Medicare and Medicaid Services (CMS) to continue operation.

Rules Coordinator: Christina Hartman—(503) 947-1187

333-004-0000

Description of the Family Planning Expansion Project

The Family Planning Expansion Project is a Medicaid waiver demonstration project approved by the Centers for Medicare and Medicaid Services to provide comprehensive family planning services to eligible low-income Oregon men and women statewide. The Family Planning Expansion Project extends Medicaid coverage for family planning services to Oregon women and men with family incomes up to 185% of the Federal Poverty Level through a contract network of qualified family planning providers. The administrative rules set forth for this program apply only to providers who have an approved medical services agreement to provide family planning services through this program. Other family planning services and reimbursement covered by Medicaid are governed by OMAP administrative rules and federal guidelines.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0010

Definitions

(1) "Approved medical services agreement" means the completed Family Planning Expansion Project agreement, submitted to and approved by the Office of Family Health.

(2) "Client" means a person of any age or gender who is enrolled in and receives contraceptive management services from the Family Planning Expansion Project.

(3) "Client Visit Record" or "CVR" means the intake form that is completed for each client visit, and that is used as a billing claim form and a data collection instrument for FPEP.

(4) "CMS" means the Centers for Medicare and Medicaid Services, located within the federal Department of Health and Human Services.

(5) "Contraceptive management" means a limited scope of family planning services as described in OAR 333-004-0040.

(6) "DHS" means the Oregon Department of Human Services or any of its divisions, programs or offices.

(7) "Family Planning Expansion Project" means the Medicaid waiver program that provides statewide family planning services to eligible clients, that is jointly administered by the Office of Family Health and the Office of Medical Assistance Programs, within the Department of Human Services.

(8) "Family planning services" means services provided to clients of childbearing age, including minors who can be considered to be sexually active, who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(9) "Family planning service provider" or "provider" means a licensed health care provider operating within a scope of practice, who is authorized by OFH to bill for contraceptive management services for eligible FPEP clients.

(10) "FPEP" means the Family Planning Expansion Project.

(11) "FPL" means the federal poverty level guidelines established each year by the Department of Health and Human Services, used to determine eligibility for FPEP and other federally funded programs.

(12) "Lawful Permanent Resident" means a person who, notwithstanding other eligibility requirements, is a qualified non-citizen as described in Section (4) of OAR 461-120-0125.

(13) "OFH" means the Office of Family Health, the office within the Oregon Department of Human Services that operates the Family Planning Expansion Project.

(14) "OMAP" means the Office of Medical Assistance Project, within the Oregon Department of Human Services.

(15) "PPS rate" means the prospective payment system rate charged for each client encounter by a clinic certified by CMS as a federally qualified health center or rural health center.

(16) "Project number" means the administrative number assigned to the family planning service provider by OFH for identification as an FPEP provider.

(17) "Site number" means the administrative number assigned to the family planning service provider by OFH for identification of the geographic location of each FPEP provider.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0020

Client Eligibility

(1) Clients must meet the following FPEP eligibility criteria:

(a) The client's income based on family size is at or below 185% of the Federal Poverty Level;

(b) The client resides in Oregon; and

(c) The client is a citizen of the United States, or meets the definition of Lawful Permanent Resident as described in these rules.

(2) Clients receiving or who are eligible for the Citizen/Alien-Waived Emergency Medical benefit package are not eligible for FPEP.

(3) A client who would otherwise be eligible but who is in the custody of a law enforcement agency or is an inmate of a public institution, including a juvenile detention facility, is not eligible for services.

(4) A client enrolled in another Medicaid program that provides family planning benefits is not eligible for FPEP.

(5) Eligibility for FPEP does not constitute eligibility for any other medical assistance program. Eligibility for family planning services, including contraceptive management, as part of any other medical program is determined by the eligibility requirements for that specific program.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0030

Client Certification and Enrollment

(1) Clients are certified on a self-declared basis, when they submit a completed and signed FPEP enrollment form, including income informa-

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tion and appropriate residency information at the clinic site at the time of service. Teenagers are certified based on their own income, whether living at home or on their own. Eligibility is effective for one year.

(2) Final determination of eligibility and enrollment into FPEP is made by OFH based on the information provided with the first claim submitted for payment. FPEP providers must keep a current, signed enrollment form on file at the clinic. Clients certified and conditionally enrolled who are found ineligible will be disenrolled.

(3) All clients must be asked at the time of certification, and at each subsequent visit, whether their insurance may be billed or if special confidentiality as provided for in OAR 333-004-0080(9) is needed. The client's response must be documented on the FPEP enrollment form and kept in the medical record file.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 409.010
Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0040

Covered Services

(1) FPEP covers contraceptive management services, which are a limited scope of family planning services directly related to initiating or obtaining a contraceptive method and maintaining effective use of that method. Family planning clinics will only be reimbursed for services related to contraceptive management.

(2) Contraceptive management services include, but are not limited to:

- (a) An annual exam, including a pap smear, payable once each year;
 - (b) Follow-up visits to evaluate method effectiveness and to manage side effects;
 - (c) Family planning counseling and education; and
 - (d) Laboratory tests; medical procedures, and pharmaceutical supplies and devices directly related to contraceptive management.
- (3) Each client may receive a one-year supply of a contraceptive method.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 409.010
Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0050

Excluded Services

(1) Services and laboratories not directly related to contraceptive management are not covered by FPEP for any eligible client. If the client accepts financial responsibility for a non-covered service that is received during a visit, payment arrangements are between the provider and the client.

(2) No payment will be made for any expense incurred for any of the following services or items:

- (a) Sterilizations for male or female clients;
- (b) Treatment for infections;
- (c) Prenatal care, including pregnancy confirmations;
- (d) Repeat pap smears not associated with contraceptive management services;
- (e) Hysterectomies or abortions;
- (f) Transportation to or from a clinic appointment;
- (g) Procedures performed for medical reasons, whether or not the procedure results in preventing or delaying pregnancy or restoring fertility; and
- (h) Any other medical service or laboratory whose primary purpose is other than contraceptive management.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 409.010
Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0060

Standards of Care for Contraceptive Management Services

Participating FPEP providers must agree to provide contraceptive management services according to the following standards.

(1) Informed Consent. The client's decision to participate in and consent to receive contraceptive management services must be voluntary and without bias or coercion.

(a) The informed consent process, provided verbally and supplemented with written materials, must be presented in a language the client understands.

(b) Consent must be obtained from the individual client receiving contraceptive management services, including minor clients.

(2) Confidentiality. Services must be provided in a manner that respects the privacy and dignity of the individual, as provided for in OAR 333-004-0080(9).

(a) Clients must be assured of the confidentiality of services and of their medical records.

(b) Records cannot be released without written client consent, except as may be required by law, or otherwise permitted by HIPAA.

(3) Availability of Contraceptive Services. A broad range of FDA-approved contraceptive methods and their applications, consistent with recognized medical practice standards, as well as fertility awareness methods must be available on-site at the clinic.

(a) If the provider organization's clinical staff lack the specialized skills to provide intra-uterine devices (IUDs) or subdermal contraceptives, or if there is insufficient volume to ensure and maintain high skill level for these procedures, clients must be referred to another qualified provider for these procedures. The provider must have an established referral arrangement, preferably with other FPEP providers, for these procedures. The clinician receiving the referral must not bill the client or OFH. Payment will be made to the original FPEP-enrolled provider actually providing the health service or procedure, who must pay the referral clinician.

(b) Clients should be able to get their first choice of contraceptive method at the time of service unless there are specific contraindications.

(4) Linguistic and Cultural Competence. All services, support and other assistance must be provided in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language and behaviors of the individuals who are receiving services, and in a manner that has the greatest likelihood of ensuring their maximum participation in the program.

(a) The provider should employ bilingual-bicultural staff, personnel or volunteers skilled or certified in the provision of medical and clinical interpretation during all clinic encounters for clients with limited English proficiencies or who otherwise need this level of assistance. All persons providing interpretation services must adhere to confidentiality guidelines.

(b) The provider must assure the competency of language assistance provided to limited English proficiency clients by interpreters and bilingual staff. Family and friends should not be used to provide interpretation services, unless requested by the client.

(c) Provider should make available easily understood client related materials and post signage in the languages of groups represented or commonly encountered in the service area.

(d) All print, electronic and audiovisual materials should be appropriate in terms of the client's language and literacy level. A client's need for alternate formats must be accommodated.

(5) Access to Care. Services covered by FPEP must be provided without cost to eligible clients. Clients must be informed of the scope of services available through the program.

(a) Appointments for established clients should be available within a reasonable time period, generally less than two weeks. New clients who cannot be seen within this time period should be referred to other qualified providers in the area.

(b) Contraceptive methods, including emergency contraception must be available at the clinic site and available to the client at the time of service.

(c) Although not covered by FPEP, treatment and supplies for sexually transmitted infections must be available at the site, or by referral.

(d) Clients in need of additional medical or psycho-social services beyond the scope of the provider organization must be provided with information about available local resources, including domestic violence and substance abuse related services. Clients must also be given a brochure listing locations of free or low-cost primary care services in the area.

(e) All services must be provided to eligible clients without regard to age, marital status, race, parity, disability, or sexual orientation.

(f) All counseling and referral-to-care options appropriate to a positive or negative pregnancy test result during authorized contraceptive services must be provided in an unbiased manner, allowing the client full freedom of choice between prenatal care, adoption counseling or pregnancy termination services.

(6) Clinical and Preventive Services.

(a) The scope of contraceptive management services offered to women must include:

(A) A comprehensive health history, including health risk facts and a complete obstetrical, gynecological, contraceptive, personal and family medical history; and a sexual health history, in conjunction with contraceptive counseling;

(B) An initial physical examination which includes a breast and pelvic exam with Pap smears;

(C) Routine laboratory tests related to the decision-making process for contraceptive choices;

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(D) Provision of a broad range of FDA-approved contraceptive methods, devices, supplies, and procedures, including emergency contraceptive care;

(E) Follow-up care for maintenance of a client's contraceptive method or for change of method;

(F) Information about providers available for meeting primary care needs and direct referral for needed medical services not covered by FPEP, including management of high-risk conditions and specialty consultation if needed.

(G) Preventive and control services for communicable diseases, provided within the context of a contraceptive management visit, including:

(i) Testing and diagnosis as appropriate for a physical exam prior to starting a new contraceptive method; and

(ii) Reporting of STIs, as required, to appropriate public health agencies for contact management, prevention, and control.

(b) The scope of contraceptive management and clinical preventative services offered to men must include:

(A) Counseling and education;

(B) Sexual health risk assessments in conjunction with contraceptive counseling; and

(C) Non-prescription contraceptive barrier methods and supplies.

(c) Services for all clients must be documented in the client medical record.

(7) Education and Counseling Services. The following elements comprise the required education and counseling services that must be provided to all contraceptive management clients to clarify personal contraceptive management goals while promoting optimal reproductive health:

(a) Initial individual assessment, and re-assessment as needed, of the client's contraceptive management educational needs and knowledge about reproductive health, including:

(A) A description of services and clinic procedures, including the pelvic exam and instructions for breast or testicular self-exam;

(B) Relevant reproductive anatomy and physiology, method options, and STI and HIV prevention;

(C) Preventive health care, nutrition, preconception health maintenance, and pregnancy plans;

(D) Psycho-social issues, such as partner relationship and communication, risk-taking, and decision-making; and

(E) An explanation of where primary care services, not covered by FPEP, are available and how they can be accessed.

(b) Initial and all subsequent education and counseling sessions must be provided in a way that is understandable to the client and conducted in a manner that facilitates the client's integration of information for the promotion of positive reproductive health behaviors, and must include:

(A) An explanation of the results of the physical examination and the laboratory tests;

(B) Information on where to obtain 24-hour emergency care services;

(C) The option of including a client's partner in the education/counseling session, and other services at the client's discretion;

(D) Effective educational information that takes into account diverse cultural and socioeconomic factors of the client and the psycho-social aspects of reproductive health.

(c) Each client must be provided with adequate information to make an informed choice about contraceptive management methods, including:

(A) A verbal or written review of all FDA-approved contraceptive methods, including sterilizations and emergency contraception, which address effectiveness, duration, side effects, complications, medical indications and contraindications, social and physical advantages, and disadvantages. Documentation of method education must be maintained in the client record;

(B) A description of the implications and consequences of sterilization procedures, if provided;

(C) Specific instructions for care, use, and possible danger signs for the selected method. Documentation of informed consent must be maintained in the client record;

(D) The opportunity for questions concerning procedures or methods; and

(E) Written information about how to obtain services for contraceptive management-related complications or emergencies.

(d) Clinicians and other staff persons providing education and counseling must be knowledgeable about the psycho-social and medical aspects of reproductive health, and trained in patient counseling techniques. Staff must make referrals for more intensive counseling as indicated.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0070

Provider Enrollment

(1) This rule applies only to providers participating in FPEP through an approved provider agreement with DHS.

(2) An individual or organization must meet applicable licensing or regulatory requirements set forth by federal and state statutes, regulations, and rules to be enrolled and to bill as a provider. In addition, all providers of services within the State of Oregon must have a valid Oregon business license if such a license is a requirement of the state, federal, county or city government to operate a business or to provide services.

(3) Signing the medical services agreement constitutes agreement by providers to comply with all applicable rules of OFH and federal and state laws and regulations.

(4) An individual or organization that is currently subject to sanctions by DHS or the federal government is not eligible for enrollment.

(5) An FPEP project number and site number will be issued to an individual or clinic upon:

(a) Completion of the application and submission of the required documents;

(b) The signing of the provider agreement by the provider or person authorized by the provider to bind the organization or individual to compliance with these rules;

(c) Verification of licensing or certification. Loss of the appropriate licensure or certification will result in immediate disenrollment of the provider and recovery of payments made subsequent to the loss of licensure or certification; and

(d) Approval of the application by DHS.

(6) Issuance of a project number and site number establishes enrollment of an individual or organization as a provider for FPEP services.

(7) If a provider changes address, business affiliation, licensure, ownership, certification, billing agents or Federal Tax Identification Number (TIN), DHS must be notified in writing within 30 days of the change. Failure to notify DHS of a change of Federal Tax Identification Number may result in the imposing of a \$50 fine. Changes in business affiliation, ownership, and Federal Tax Identification Number may require the submission of a new application. Payments made to providers who have not furnished such notification may be recovered.

(8) Providers of services outside the state of Oregon will be enrolled under the following conditions:

(a) The provider is appropriately licensed or certified and meets standards established within the provider's state for participation in Medicaid. Disenrollment from the other state's Medicaid program is a basis for disenrollment from FPEP;

(b) The provider lives in a state contiguous to Oregon, and is within seventy-five miles of the Oregon border.

(9) Provider termination:

(a) The provider may terminate enrollment at any time. The request must be in writing, via certified mail, return receipt requested. The notice shall specify the provider number to be terminated and the effective date of termination. Termination of the provider enrollment does not terminate any obligations of the provider for dates of services during which the enrollment was in effect;

(b) FPEP provider terminations or suspensions by OFH may be for, but are not limited to the following reasons:

(A) Breaches of the medical services agreement; or

(B) Failure to comply with the statutes, regulations and policies of DHS, and federal or state regulations that are applicable to the provider.

(10) The provider is entitled to a contested case hearing to determine whether the provider's project and site number will be revoked.

(11) In the event of bankruptcy proceedings, the provider must immediately notify DHS in writing.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0080

Billing

(1) Only clinics providing family planning services pursuant to an approved medical services agreement, and who have been assigned a project number and site number may submit claims for FPEP services.

(2) All contraceptive management services are billed by submitting CVR data or by using the CVR form.

(3) Supplies are billed through the CVR form at actual acquisition cost; that is, the amount actually paid by the provider, including shipping, after applying any discounts, promotions or other reductions.

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(4) For clinics that bill a PPS rate for client encounters, reimbursement for supplies and laboratory services is included in the encounter rate. No additional costs may be billed.

(5) All billings must be coded with the most appropriate ICD-9-CM diagnosis codes in the V25 Contraceptive Management series to the highest level of specificity.

(6) Laboratory services related to contraceptive management are reimbursed through a global reimbursement that includes clinical services and laboratory services. No separate laboratory bills will be reimbursed.

(7) Birth control methods include natural family planning, abstinence, IUD, cervical cap, oral contraceptives, subdermal implants, condoms and diaphragms, patches, rings, injectibles, and any other method approved by the Food and Drug Administration.

(8) As reflected in the medical services agreement, the provider must assure that all laboratory tests done at the clinic site or by an outside clinic are conducted by CLIA certified laboratories.

(9) Billing OFH for contraceptive management services requires an additional confidentiality protection for clients beyond the standard confidentiality of medical services. All clients who have private insurance may request that it not be billed, if they believe they are at risk of physical or emotional harm, should knowledge of the family planning services be known to the parent or partner or other household member. All clients must be asked at each visit whether they have insurance, and whether it can be billed.

(10) A provider enrolled with FPEP must not seek payment from an eligible client, or from a financially responsible relative or representative of that individual, for any services covered by FPEP. Provider accepts OFH reimbursement for each visit as payment in full.

(a) A client may be billed for services that are not covered by FPEP. However, the client must be informed in advance of receiving the specific service that it is not covered, the estimated cost of the service, and that the client or client's representative is financially responsible for payment for the specific service. Providers must be able to document in writing signed by the client or client's representative, that the client was provided this information and the client knowingly and voluntarily agreed to be responsible for payment.

(b) Services not covered by FPEP are those outside of the scope of contraceptive management.

(11) All claims must be billed using the CVR as described in the claims section of the rules. A claim is considered a "valid claim" only if all required data is entered or is sent with each claim form for each visit.

(12) Prior to submission of a claim to OFH for payment, an approved provider agreement must be in place. Upon submission of a claim to OFH for payment, the provider agrees that it has complied with all rules of FPEP.

(a) Except for services performed by a CLIA certified laboratory outside of the clinic, all billings must be for services provided within the provider's licensure or certification.

(b) It is the responsibility of the provider to submit true and accurate information when billing OFH.

(c) A claim may not be submitted prior to providing services.

(13) Diagnosis Code Requirement:

(a) A primary diagnosis code is required on all claims.

(b) Use the highest degree of specificity within ICD-9-CM codes for Contraceptive Management. No other primary diagnosis code can be billed.

(14) No person shall submit to OFH:

(a) Any false claim for payment;

(b) Any claim altered in such a way as to result in a payment for a service that has already been paid;

(c) Any claim upon which payment has been made by another source unless the amount paid is clearly entered on the claim form.

(15) The provider is required to submit a billing error edit correction, or to refund the amount of the overpayment, on any claim where the provider identifies an overpayment made by OFH.

(16) A provider who, after having been previously warned in writing by DHS or the Department of Justice about improper billing practices, is found to have continued such improper billing practices and has had an opportunity for a contested case hearing, shall be liable to OFH for up to triple the amount of the established overpayment received as a result of such violation.

(17) Third Party Resources:

(a) Unless a client who has private insurance asks for special confidentiality as provided for in Section 9 of this section, federal law requires that all reasonable measures be taken to ensure that FPEP will be the payor of last resort;

(b) Providers must make reasonable efforts to obtain payment first from other resources. For the purposes of this rule "reasonable efforts" include:

(A) Determining the existence of insurance or other resource by asking the client;

(B) When third party coverage is known to the provider, by any other means available, prior to billing FPEP:

(i) The provider must bill the third party resource;

(ii) Comply with the insurer's billing and authorization requirements; and

(iii) Resubmit a denied claim when the service is payable in whole or in part by an insurer.

(C) If the client has private insurance that has been billed for FPEP services and the reimbursement from the insurance does not cover the entire cost of the services, the remaining balance may be billed to OFH.

(D) Providers are required to submit a billing error edit correction showing the amount of the third party payment or to refund the amount received from another source within 30 days of the date the payment is received. Failure to submit a billing error edit correction within 30 days of receipt of the third party payment or to refund the appropriate amount within this time frame is considered concealment of material facts and grounds for recovery or sanction.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0090

Claims

(1) In addition to serving as a claims form for FPEP, the CVR is a data collection instrument used by the federal Department of Health and Human Service's Office of Population Affairs. The purpose of the form is to collect statistical data for clients who receive family planning services through health programs administered by OFH.

(2) Although data requirements on the CVR may require more information than necessary for payment of a specific claim, all related fields must be filled out and submitted. Data gathered from the CVR is used for health care operations and oversight of the waiver program, as well as for public health purposes established by DHS.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0100

Timely Submission of Claims

(1) All claims for services must be submitted within 12 months of the date of service.

(2) Errors causing rejection of any claim must be resolved within 12 months of the date of service. Claims older than 12 months will not be paid, except as provided for in subsection (3) of this section.

(3) When OFH has made an error that caused the provider not to be able to bill within 12 months of the date of service, then the claim may be submitted to OFH. The error must be confirmed by OFH.

(4) Client data not related to payment of the claim may be corrected at any time after the date of service.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0110

Payment

(1) OFH will make payment only to the enrolled provider who actually performs the services for eligible clients, except as provided for in OAR 333-004-0060(3)(a).

(2) The FPEP encounter rate is set by OFH. Claims are reimbursed at the rate in effect on the date of service.

(3) Family planning pharmaceuticals, devices and supplies are separately reimbursed at acquisition cost.

(4) Federally qualified health centers or rural health centers are paid at their PPS rate, as provided for in OAR 333-004-0080(4).

(5) OFH payments for FPEP provider services, pharmaceuticals, devices and supplies, unless in error, constitute payment in full.

(6) OFH will not make payment on claims that have been assigned, sold, or otherwise transferred, or on which a provider of billing services receives a percentage of the amount billed or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a provider for accounts receivable.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

ADMINISTRATIVE RULES

333-004-0120

Requirements for Financial, Clinical and Other Records

(1) OFH is responsible for analyzing and monitoring the operation of FPEP and for auditing and verifying the accuracy and appropriateness of payment, utilization of services, the quality of care, and access to care. The provider shall:

(a) Develop and maintain adequate financial and clinical records and other documentation which supports the services for which payment has been requested. Payment will be made only for services that are adequately documented.

(b) All medical records must document the service provided, primary diagnosis code for the services, the date on which the service was provided, and the individual who provided the services. Patient account and financial records must also include documentation of charges, identify other payment resources pursued, indicate the date and amount of all debit or credit billing actions, and support the appropriateness of the amount billed and paid. The records must be accurate and in sufficient detail to substantiate the data reported.

(2) Clinical records must sufficiently document that the client's diagnosis was primarily for contraceptive management services. The client's record must be annotated each time a service is provided and signed or initialed by the individual who provided the service or must clearly indicate the individual who provided the service. Information contained in the record must meet the standards of care for contraceptive management services, and must be appropriate in quality and quantity to meet the professional standards applicable to the provider or practitioner and any additional standards for documentation found in this rule.

(3) The provider must have policies and procedures to ensure the maintenance of the confidentiality of medical record information. These procedures ensure that the provider may release such information in accordance with federal and state statutes, ORS 179.505 through 179.507, 411.320, 433.045, 42 CFR part 2, 42 CFR subpart F, 45 CFR 205.50, including ORS 433.045(3) with respect to HIV test information.

(4) The provider must retain clinical records for seven years and financial and other records described in this rule for at least five years from the date of service. Original enrollment records must be retained for seven years.

(5) Upon written request from OFH, OMAP, DHS, the Oregon Department of Justice Medicaid Fraud Unit, the Oregon Secretary of State or their authorized representatives (Requestor), the provider must furnish requested documentation, without charge, immediately or within the time-frame specified in the written request. Copies of the documents may be furnished unless the originals are requested. At their discretion, representatives of Requestor may review and copy the original documentation in the provider's place of business. Upon the written request of the provider, Requestor may, at their sole discretion, modify or extend the time for provision of such records if, in the opinion of OFH, good cause for such extension is shown. Factors used in determining whether good cause exists include:

(a) Whether the written request was made in advance of the deadline for production;

(b) If the written request is made after the deadline for production, the amount of time elapsed since that deadline;

(c) The efforts already made to comply with the request;

(d) The reasons the deadline cannot be met;

(e) The degree of control that the provider had over its ability to produce the records prior to the deadline;

(f) Other extenuating factors.

(6) Access to records, inclusive of medical charts and financial records does not require authorization or release from the client if the purpose of such access is:

(a) To perform billing review activities; or

(b) To perform utilization review activities; or

(c) To review quality, quantity and services provided; or

(d) To facilitate payment authorization and related services; or

(e) To investigate a client's fair hearing request; or

(f) To facilitate investigation by DHS; or

(g) Where review of records is necessary to the operation of the program.

(7) Failure to comply with requests for documents and within the specified time-frames means that the records subject to the request may be deemed by DHS not to exist for purposes of verifying appropriateness of payment, medical appropriateness, the quality of care, and the access to care in an audit or overpayment determination, and accordingly subjects the

provider to possible denial or recovery of payments made by DHS, or to sanctions.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0130

Compliance with Federal and State Statutes

(1) Submission of a claim for medical services or supplies provided to an FPEP client shall be deemed a representation by the medical provider to OFH of the medical provider's compliance with the applicable sections of the federal and state statutes referenced in this rule:

(a) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973;

(b) Title II and Title III of the Americans with Disabilities Act of 1991;

(c) Title VI of the Civil Rights Act of 1964;

(d) 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories).

(2) Providers are required to comply with the "Health Insurance Portability and Accountability Act" (HIPAA) regarding the confidentiality of client records.

(3) Providers described in ORS Chapter 419B are required to report suspected child abuse to their local office of the State Office for Services to Children and Families or police, in the manner described in ORS 419B.

(4) The Clinical Laboratory Improvement Act (CLIA), requires all entities that perform even one laboratory test, including waived tests on, "materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings" to meet certain Federal requirements. If an entity performs tests for these purposes, it is considered under CLIA to be a laboratory.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0140

Denial or Recovery of Reimbursement Resulting from Review or Audit

(1) OFH's staff, contractor or auditor may review a claim for assurance that the specific medical service or contraceptive device or supply was provided in accordance with the program's policies and rules and the generally accepted standards of a provider's scope of practice or specialty.

(2) Payment may be denied or subject to recovery if review or audit determines the service does not meet the program's policies, rules or the Standards of Care for Contraceptive Management Services set forth in OAR 333-004-0060.

(3) The Office of Medical Assistance Programs will be notified of all audit activities undertaken by OFH.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0150

Recovery of Overpayments to Providers Resulting from Review or Audit

(1) When OFH determines that an overpayment has been made to a provider, the amount of overpayment is subject to recovery:

(a) To determine the overpayment amount, OFH may use the random sampling method such as that detailed in the paper entitled "Development of a Sample Design for the Post-Payment Review of Medical Assistance Payments," written by Lyle Calvin, Ph.D., ("Calvin Paper"). The Office of Family Health hereby adopts by reference, but is not limited to, the method of random sampling described in the Calvin Paper;

(b) After OFH determines an overpayment amount by the random sampling method set forth in subsection (a) of this rule, the provider may request a 100 percent audit of all billings submitted to the Office of Family Health for contraceptive management services provided during the period in question. If a 100 percent audit is requested:

(A) Payment and arrangement for a 100 percent audit is the responsibility of the provider requesting the audit; and

(B) The audit must be conducted by a certified public accountant who is knowledgeable with the Oregon Administrative Rules covering the payments in question, and must be conducted within 120 calendar days of the request to use such audit in lieu of OFH's random sample.

(2) The amount of the review or audit overpayment to be recovered:

(a) Will be the entire amount determined or agreed to by OFH; and

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(b) Is not limited to amounts determined by criminal or civil proceedings;

(c) Will include interest to be charged at allowable State rates.

(3) The Office of Family Health will deliver to the provider by registered or certified mail or in person a request for repayment of the overpayment and the documentation to support the alleged amount.

(4) If the provider disagrees with OFH's determination or the amount of overpayment the provider may appeal the decision by requesting a contested case hearing:

(a) A written request for hearing must be submitted to OFH by the provider within thirty (30) calendar days of the date of the decision affecting the provider. The request must specify the areas of disagreement;

(b) Failure to request a hearing or administrative review in a timely manner constitutes acceptance by the provider of the amount of the overpayment.

(5) The overpayment is due and payable 30 calendar days from the date of the decision by OFH:

(a) An additional 30 day grace period may be granted the provider upon request to the OFH;

(b) A request for a hearing does not change the date the repayment of the overpayment is due.

(6) The Office of Family Health may extend the reimbursement period or accept an offer of repayment terms. Any change in reimbursement period or terms must be made in writing by the Office of Family Health.

(7) If the provider refuses to reimburse the overpayment or does not adhere to an agreed upon payment schedule, OFH may:

(a) Recoup future provider payments up to the amount of the overpayment; or

(b) Pursue civil action to recover the overpayment.

(8) As the result of a hearing the amount of the overpayment may be reduced in part or in full.

(9) The Office of Family Health may, at any time, change the amount of the overpayment upon receipt of additional information. Any changes will be verified in writing by OFH. Any monies paid to OFH that exceed an overpayment will be refunded to the provider.

(10) If a provider is terminated or sanctioned for any reason, OFH may pursue civil action to recover any amounts due and payable to FPEP.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0160

Provider Sanctions

The following are conditions that may result in the imposition of a sanction on a provider.

(1) Basis for Sanction:

(a) Conviction of a provider of a felony or misdemeanor related to a crime or violation of Title XVIII, XIX, or XX of the Social Security Act or related state laws (or entered a plea of nolo contendere);

(b) Conviction of fraud related to any federal, state, or locally financed health care program or commission of an act that is subject to criminal or civil penalties under Medicaid statutes;

(c) Conviction of interference with the investigation of health care fraud;

(d) Conviction of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(e) Failure to comply with the state and federal statutory requirements set forth in section 333-004-0130;

(f) By actions of any state licensing authority for reasons relating to the provider's professional competence, professional conduct, or financial integrity, the provider either:

(A) Had a health care license suspended or revoked, or has otherwise lost such license; or

(B) Surrendered the license while a formal disciplinary proceeding was pending before a licensing authority.

(g) Suspension or exclusion from participation in a federal or state health care program for reasons related to professional competence, professional performance, or other reason;

(h) Improper billing practices, including billing for excessive charges or visits; furnishing items or services substantially in excess of the patient's contraceptive management needs, or of a quality that fails to meet professionally recognized standards;

(i) Failure to furnish services as required by law or contract with the Office of Family Health, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) the client;

(j) Failure to supply requested information on subcontractors and suppliers of goods or services;

(k) Failure to supply requested payment information;

(l) Failure to grant access or to furnish as requested, records, or grant access to facilities upon request of OFH or a designated Requestor;

(m) Receiving payments for services provided to persons who were not eligible;

(n) Establishing multiple claims using procedure codes which overstate or misrepresent the level, amount or type of health care provided;

(o) Failure to develop, maintain, and retain in accordance with relevant rules and standards adequate clinical or other records which document the medical appropriateness, nature, and extent of the health care provided;

(p) Failure to develop, maintain, and retain in accordance with relevant rules and standards adequate financial records which document charges incurred by a client and payments received from any source;

(q) Failure to follow generally accepted accounting principles or accounting standards or cost principles required by federal or state laws, rule, or regulation;

(r) Submission of claims or written orders contrary to generally accepted standards of medical practice;

(s) Submission of claims for services which exceed that requested or agreed to by the client or the responsible relative or guardian or requested by another medical practitioner;

(t) Breach of the terms of the provider service agreement;

(u) Failure to correct deficiencies in operations after receiving written notice of the deficiencies from the OFH;

(v) Submission of any claim for payment for which payment has already been made by OFH; or

(w) Provision of or billing for services provided by ineligible or unsupervised staff.

(2) A provider who has been suspended or terminated from participation in a federal or state medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, shall not submit claims for payment, either personally or through claims submitted by any billing provider or other provider, for any services or supplies provided under FPEP, except those services or supplies provided prior to the date of suspension or termination.

(3) No provider shall submit claims for payment to OFH for any services or supplies provided by a person or provider entity that has been suspended or terminated from participation in a federal or state medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, except for those services or supplies provided prior to the date of suspension or termination.

(4) When the provisions of subsections (2) or (3) of this section are violated, OFH may suspend or terminate the provider who is responsible for the violation.

(5) Provider sanctions will be imposed at the discretion of DHS or the director of the office whose budget includes payment for the services involved.

(6) The Office of Medical Assistance Programs will be notified whenever a sanction is imposed on a provider.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0170

Provider Appeals

A provider may appeal certain decisions affecting the provider made by OFH. There are two levels of appeal. Level 1 is a reconsideration on a claim. Level 2 is a contested case hearing.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

333-004-0180

Provider Appeals (Level 1) — Claims Reconsideration

A provider disputing OFH's claim decision may request reconsideration. The provider must submit the request in writing to OFH. The request must include the reason for the dispute, and any information pertinent to the outcome of the dispute. OFH will complete an additional review and respond back to the provider in writing. If the provider is not satisfied with the review, the provider may request a contested case hearing.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05

ADMINISTRATIVE RULES

333-004-0190

Provider Appeals (Level 2) — Contested Case Hearing

Contested case hearings will be held in accordance with ORS 183.
Stat. Auth.: ORS 409
Stats. Implemented: ORS 409.010
Hist.: PH 4-2005, f. & cert. ef. 2-18-05

Department of Human Services, Self-Sufficiency Programs Chapter 461

Adm. Order No.: SSP 2-2005

Filed with Sec. of State: 2-18-2005

Certified to be Effective: 2-18-05

Notice Publication Date: 12-1-04

Rules Amended: 461-155-0225, 461-155-0235

Subject: Rules 461-155-0225 and 461-155-0235 are being amended to reflect the annual increase in the federal poverty levels published in the Federal Register. These rules include income and premium standards based on the federal poverty levels.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-155-0225

Income Standard; OHP

(1) If a financial group contains a person with significant authority in a business entity — a “principal” as defined in OAR 461-140-0040 — the group is ineligible for the OHP program if the gross income of the business entity exceeds \$10,000. If the need group is not ineligible under this section, its eligibility is evaluated under section (2) of this rule.

(2) The countable income standards for OHP are as follows:

(a) The countable income standard for OHP-OPC and OHP-OPU is 100 percent of the 2005 federal poverty level. [Table not included. See ED. NOTE.]

(b) The countable income standard for OHP-OP6 is 133 percent of the 2005 federal poverty level. [Table not included. See ED. NOTE.]

(c) The countable income standard for OHP-OPP and OHP-CHP is 185 percent of the 2005 federal poverty level (see section (2)(a) of this rule). [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 2-2004(Temp), f. & cert. ef. 2-13-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 2-2005, f. & cert. ef. 2-18-05

461-155-0235

OHP Premium Standards

In the OHP program, the following steps are followed to determine the amount of the monthly premium for the filing group:

(1) The number of persons in the OHP need group is determined in accordance with OAR 461-110-0630.

(2) The financial group’s countable income is determined in accordance with OAR 461-150-0055 and 461-160-0700.

(3) Based on the number in the need group and the countable income, the monthly premium for each non-exempt OHP-OPU client in the benefit group is determined from the following table: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 35-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 22-1996, f. 5-30-96, cert. ef. 6-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 6-2003(Temp), f. 2-26-03, cert. ef. 3-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 5-2004(Temp), f. & cert. ef. 3-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 2-2005, f. & cert. ef. 2-18-05

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

Filed with Sec. of State: 3-2-2005

Certified to be Effective: 3-2-05 thru 6-30-05

Notice Publication Date:

Rules Amended: 461-175-0300

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

Rules Coordinator: Annette Tesch—(503) 945-6067

461-175-0300

Notice Situation; Prior Notice

(1) A basic decision notice is used if the benefit group was informed in writing, when their benefits began, that they would receive benefits only for a specific period of time.

(2) A basic decision notice is used when a special need allowance granted for a specific period of time is removed at the end of the specified period and the benefit group was informed of this in writing when the allowance began. A timely continuing benefit decision notice is required if stopping the special need allowance results in benefit closure.

(3) In the EA program, no decision notice is used if the client received a decision notice at the time of application stating that the emergency assistance was authorized for only a 30-day period.

(4) In the ADC-PLS program, a basic decision notice is used if:

(a) An employer submits a wage reimbursement billing and the Department calculates a supplement (see OAR 461-190-0416 about supplements);

(b) The benefit group received a timely continuing benefit decision notice that the method of payment would be changed from cash to employer-paid wages; and

(c) The notice specified the period of time that benefits would be diverted.

(5) In the Food Stamp program, no decision notice is required if the client received written notification at the time of application or redetermination stating that:

(a) The benefit group’s allotment would vary from month to month and listed the anticipated changes;

(b) In the case the client applied for both cash assistance and food stamp benefits, the food stamp benefits would be reduced or closed upon approval of the cash assistance; or

(c) In the case of a benefit group that has applied for expedited benefits, receipt of benefits beyond the month of application depends on the client providing required verification (see OAR 461-115-0690). In such cases, the Department may act on the verified information without further notice.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 25-1994, f. & cert. ef. 11-1-94; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 3-2005(Temp), f. & cert. ef. 3-2-05 thru 6-30-05

Department of Oregon State Police Chapter 257

Adm. Order No.: OSP 1-2005(Temp)

Filed with Sec. of State: 3-1-2005

Certified to be Effective: 3-1-05 thru 8-27-05

Notice Publication Date:

Rules Amended: 257-010-0025, 257-010-0035

Subject: Adopt OAR 257-010-0025(13) establishing fee of \$52.00 for conducting criminal records checks under ORS 181.533. These checks were originally provided under OAR 257-010-0025(12) for the fee of \$12.00. OAR 257-010-0025(12) will now be dedicated to the fee for conducting non-retained applicant and regulatory fingerprint based criminal records checks.

Adopt OAR 257-010-0025(14) pertaining to customer responsibility for covering the prevailing user fee charged by the FBI for fingerprint based record checks. This new section relocates language previously found in OAR 257-010-0025(1)(B).

Amend OAR 257-010-0025(1)(B) by changing fee from \$2.00 to \$4.00; OAR 257-010-0025(1)(C)(d) by changing fee from \$15.00 to \$10.00; OAR 257-010-0025(11) by changing fee from \$15.00 to \$27.00; OAR 257-010-0025(12) by changing fee from \$12.00 to \$28.00 and eliminating language no longer applicable to this section;

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OAR 257-010-0035(6) by changing fee from \$12.00 to \$33.00; and, OAR 257-010-0035(7) by changing fee from \$5.00 to \$20.00.

Rules Coordinator: Cort Dokken—(503) 378-3725, ext. 4105

257-010-0025

Access to and Use of Criminal Offender Information

(1) Access to OSP criminal offender information by any means shall be limited to:

(a) Criminal Justice Agencies, where the information is to be used for the administration of criminal justice, Criminal Justice Agency employment, or the information is required to implement a federal or state statute, local ordinance, Executive Order, or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct, or other demonstrated and legitimate needs;

(b) Designated Agencies upon Executive Order of the Governor, where the information is required to implement a federal or state statute, Executive Order, or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct or for agency employment purposes, or licensing purposes, or other demonstrated and legitimate needs:

(A) When a Designated Agency requests criminal offender information about an individual from OSP under ORS 181.555(1) for agency employment, licensing or other permissible purposes, the agency shall provide documentation that the individual:

(i) Gave prior written consent for the agency to make a criminal offender record check through the OSP; or

(ii) Has received written notice from the agency that a criminal offender record check may be made through the OSP. Notice shall be provided prior to the time the request is made and shall include: Notice of the manner in which the individual may be informed of the procedures adopted under ORS 181.555(3) for challenging inaccurate criminal offender information; and notice of the manner in which the individual may become informed of rights, if any, under Title VII of the Civil Rights Act of 1964; and notice that discrimination by an employer on the basis of arrest records alone may violate federal civil rights law and that the individual may obtain further information by contacting the Bureau of Labor and Industries.

(B) When an authorized agency or organization requests, in written form, criminal offender information about an individual from OSP under ORS 181.555(1), that agency will be charged a fee of \$4 for each individual checked (fee does not apply when check is made by agency using their LEDS terminal).

(c) Qualified entities upon successful determination as being a qualified entity by the OSP Identification Services Section. Qualified entities may request from OSP Identification Services Section a criminal records check for purposes of evaluating the fitness of a subject individual as an employee, contractor or volunteer. The OSP Identification Services Section may access state and federal criminal records only through use of the subject individual's fingerprints.

(A) Before the OSP Identification Services Section conducts a criminal records check based on the subject individual's fingerprints:

(i) The OSP Identification Services Section shall determine whether the entity requesting the criminal records check is a qualified entity as defined in 257-010-0015(14) and has executed a user agreement making that determination;

(ii) The qualified entity must establish criteria to be used by the OSP Identification Services Section in reviewing the criminal offender information for a final record check determination;

(iii) The qualified entity must provide the criteria established under paragraph (ii) of this subsection to the OSP Identification Services Section; and

(iv) The qualified entity must have informed the subject individual that the qualified entity might request a fingerprint-based criminal records check and that the subject individual may obtain a copy of the record check report from, or challenge the accuracy or completeness of the record check report through, the OSP Identification Services Section or the Federal Bureau of Investigation.

(B) Upon receipt of a subject individual's criminal offender information, the OSP Identification Services Section shall make a final record check determination by comparing the criminal offender information with the criteria provided to the OSP Identification Services Section by the qualified entity under subsection (A)(ii) of this section. In making the final record check determination, the OSP Identification Services Section may only consider information that the Department of State Police may disclose under ORS 181.560. The OSP Identification Services Section may only

consider records of any conviction, or of any arrest less than one year old on which there has been no acquittal or dismissal.

(C) The OSP Identification Services Section shall only respond to a qualified entity's inquiry concerning a subject individual in the following manner and shall not provide specific criminal offender information:

(i) Yes. (No disqualifying criteria established by the qualified entity and ORS 181.560 was found.)

(ii) No. (One or more disqualifying criteria established by the qualified entity and ORS 181.560 was found.)

(d) A person or agency not defined as a Criminal Justice, Designated Agency, or Qualified Entity has access only through the OSP Identification Services Section pursuant to ORS 181.555 and 181.560. The request must be submitted in writing and may be hand carried or mailed to the OSP Identification Services Section. A fee of \$10 will be charged for each check. A fee of \$5 will be charged for each request for copy certification by a notary public in addition to any other applicable fee. Checks are to be made payable to the Oregon State Police. Inquiries are to be addressed to Oregon State Police, Identification Services Section, 3772 Portland Road N.E., Salem, OR 97303. Inquiries may also be made through the OSP webpage at www.osp.state.or.us, when a customer account is established for billing purposes.

(e) The requesting party must furnish OSP with sufficient information to assist identifying and notifying the individual of interest. If the information is sought for employment purposes the requester must state on the written request that the individual has been so advised and the manner in which the individual was so advised;

(f) These individuals will be advised by letter the name of the requestor, and that they are allowed to review their criminal history for inaccurate or incomplete information. They will also be advised that they may become informed of certain rights under Title VII of the Civil Rights Act of 1964 by contacting the Bureau of Labor and Industries;

(g) If a challenge is received prior to the end of the statutory 14 day waiting period, response to the requester will be held in abeyance until the challenge is resolved;

(h) OSP will respond to all requests and furnish Oregon conviction information and any arrest information less than one year old on which there has been no acquittal or dismissal. If the compiled information does not meet the above criteria or there is no record of the subject, OSP will reply to the requester that there is no criminal record.

(2) Access to Oregon CCH information by means of computer terminals shall be limited to Criminal Justice and Designated Agencies using their agency identification number (ORI) as authorized by OSP in an "Agency Agreement."

(3) Oregon criminal offender information may be shared between authorized Criminal Justice and Designated Agencies. All other secondary dissemination of criminal offender information by authorized agencies or personnel is prohibited unless expressly permitted by Oregon Revised Statute. Dissemination of Oregon criminal offender information by the Department of Human Services or the Employment Department to public or private agencies authorized by ORS 181.537(1)(d) shall be limited to persons with a demonstrated and legitimate need to know the information. Such need must be demonstrated to the satisfaction of the Department of Human Services or the Employment Department responsible for the dissemination of the information. Title 28, United States Code, Section 534 and Title 28, Code of Federal Regulations, Section 20.33(b), prohibits dissemination of FBI criminal offender information to public or private agencies by Criminal Justice or Designated Agencies. Inquiries for nonofficial purposes or the checking of records for unauthorized persons or agencies is prohibited. A person wishing to review their criminal history record maintained by the FBI should write to: Federal Bureau of Investigation, CJIS Division, Attn: SCU, Module D2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306. The FBI will inform the person how to obtain a copy of their record and, if necessary, how to challenge the accuracy or completeness of that record.

(4) Criminal offender information may be furnished to authorized Criminal Justice and Designated Agency employees and no person who has been convicted of a crime which could have resulted in a sentence to a federal or state penitentiary will be allowed to operate a computer terminal accessing CCH information or have access to Criminal offender information. All authorized agency employees as described above must be fingerprinted and the fingerprint card submitted to OSP. The fingerprint cards will be searched against the state and federal criminal record files. The "Reason Fingerprinted" may be for criminal justice employment such as "Police Officer," "Corrections Officer" or "Access to CCH." These fingerprint cards will be retained by OSP and entered into the CCH File. Exceptions to

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this rule may be made in extraordinary circumstances upon written application to the Superintendent of the Oregon State Police setting forth such circumstances. The Superintendent of OSP will maintain a central file where such exception authorization shall be filed.

(5) Screening of Criminal Justice and Designated Agency employees who have access to CCH or criminal offender information records is the responsibility of the employing agency.

(6) Any Criminal Justice or Designated Agency obtaining Oregon or FBI criminal offender information, either directly through that agency's computer terminal, through the computer terminal of another agency, or directly from OSP, must have executed a written "Agency Agreement" with the OSP prior to such access. Any public or private agency receiving Oregon criminal offender information from the Department of Human Services or the Employment Department pursuant to ORS 181.537(1)(c) or (d) must have executed a written "Agency Agreement" with the Department of Human Services or the Employment Department prior to receiving the information. Dissemination of Oregon criminal offender information received under authority of ORS 181.537(1)(d) by a public or private agency is strictly prohibited.

(7) Security of computer terminals. Any computer terminal with CCH accessing capability must be physically secure and placed in a location not available to unauthorized persons. Computer terminals must be so placed that unauthorized persons may not observe the content of messages transmitted or received on such computer terminal.

(8) Security of criminal offender information records. Any Criminal Justice or Designated Agency or private entity obtaining or receiving criminal offender information shall maintain those records in secure files, available only to authorized agency employees, until they are destroyed by burning, shredding or secure and confidential recycling and shall treat those records in such a manner that the record does not become public information in any later proceeding, except through court order or as otherwise provided by law.

(9) Radio Transmission. Any radio transmission of criminal offender information records shall be limited to essential details only, with information identifying individuals and offenses concealed insofar as possible. Plain text transmission of an entire (summary or full CCH) record is prohibited.

(10) Fee for relief from the bar of purchasing/possessing a firearm. When a person barred from possessing a firearm under ORS 166.250(1)(c)(A), (B), (D) or (E) or barred from purchasing a firearm under ORS 166.470 and is granted relief from the bar by a court under ORS 166.274, a fee of \$12 will be charged to enter and maintain this information in the CCH File as authorized under ORS 166.274(4)(c).

(11) Fee for conducting applicant and regulatory fingerprint based criminal record background check when fingerprint card is retained in the CCH File. A fee of \$27 will be charged to conduct a fingerprint based criminal record background check when the fingerprint card and related information is entered and maintained in the CCH File.

(12) Fee for conducting applicant and regulatory fingerprint based criminal record background check when fingerprint card is not retained in the CCH File. A fee of \$28 will be charged to conduct a fingerprint based criminal record background check when the fingerprint card and related information is returned to the contributor or destroyed by the ISS. This fee will be waived as provided in ORS 181.556(1) & (2).

(13) Fee for conducting applicant and regulatory fingerprint based criminal record background check for qualified entity based on criteria established by the qualified entity. A fee of \$52 will be charged to conduct a fingerprint based criminal record background check and fitness determination. The fingerprint card and results of the fitness determination will be returned to the contributor. This fee will be waived as provided in ORS 181.556(1) & (2).

(14) Agencies authorized by Oregon Revised Statute or federal law to submit fingerprint record checks to the FBI, Identification Division via OSP, are responsible to pay the prevailing user fee charged by the FBI for those fingerprint record checks in addition to the OSP user fee, except as otherwise provided by state or federal law.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 166.291, 166.412, 181.537, 181.555, 181.560(4), 183.310 - 183.550, 192.440 & 194.164
Stats. Implemented: ORS 166.291, 166.412 & 181.880
Hist.: DSP 2, f. 6-14-74, ef. 7-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; DSP 1-1981, f. & ef. 5-1-81; DSP 3-1981, f. 10-30-81, ef. 11-1-81; DSP 1-1982, f. 3-12-82, ef. 3-15-82; OSP 1-1990, f. & cert. ef. 6-4-90; OSP 1-1991, f. 5-17-91, cert. ef. 7-1-91; OSP 1-1992, f. 3-17-92, cert. ef. 3-18-92; OSP 4-1993, f. & cert. ef. 12-20-93; OSP 4-1994, f. & cert. ef. 8-2-94; OSP 3-1996, f. 5-24-96, cert. ef. 7-1-96; OSP 1-2002, f. & cert. ef. 3-8-02; OSP 1-2005(Temp), f. & cert. ef. 3-1-05 thru 8-27-05

257-010-0035

Access by Individuals for Purpose of Review and/or Challenge

(1) All individuals desiring to review information concerning them maintained in the OSP Criminal Offender Information System or Firearm Instant Check System, or who believes that the information as maintained is inaccurate, incomplete, or maintained in violation of any state or federal statute or act, shall be entitled to review such information and obtain a copy thereof for the purpose of review, challenge or correction.

(2) Verification of such individual's identity may only be effected through submission, in writing, of name, date of birth, and a set of rolled ink fingerprints to the Oregon State Police, Identification Services Section, 3772 Portland Road N.E., Salem, OR 97303. The request for review may be made at the Oregon State Police, Identification Services Section, 3772 Portland Road N.E., Salem, OR 97303, or through mail or postal service. The OSP may prescribe reasonable hours and places of inspection. If the request is made by mail or postal service, after positive identification by the OSP of the fingerprints submitted, copy of the record, along with the fingerprints submitted for that purpose, will be returned to the individual making the request to the address provided in the request.

(3) All data included in the Criminal Offender Information System is obtained from contributing Criminal Justice and Designated Agencies. All data included in the Firearm Instant Check System is obtained from contributing Oregon Gun Dealers as defined in 18 U.S.C. §921. If after review of the information concerning them as maintained in such record, the individual believes that it is incomplete or incorrect in any respect and wishes changes, corrections, or updating of the alleged deficiency, they must make application directly to the contributor of the questioned information, requesting the appropriate agency or Gun Dealer to correct it in accordance with its respective administrative rules and procedures. Upon receipt of an official communication directly from the agency or Gun Dealer which contributed the original information, the OSP will make any changes necessary in accordance with the information supplied by the agency or Gun Dealer.

(4) Any individual whose record is not removed, modified, or corrected as they may request, following refusal by the agency originally contributing such information, may proceed under the provisions of Rules 30.00 to 30.80 of the Attorney General's Model Rules of Practice and Procedures under the Administrative Procedure Act, relating to contested cases and judicial review. After conclusion of such procedure or review, any information found to be inaccurate, incomplete, or improperly maintained, shall be removed from the individual's record and the originating agency so notified with copy of the record as corrected being furnished to the challenging individual.

(5) Any Criminal Justice or Designated Agency receiving a record after such notice of contested case has been filed and prior to final determination, shall be notified by the OSP that the record is being challenged.

(6) All individuals desiring to obtain a police clearance or documentation of no record maintained in the OSP Criminal Offender Information System for purposes other than review, challenge or correction specified in (1) will be charged a fee of \$33 for each request. Verification of the requesting individual's identity shall only be effected through submission and positive identification of the person's fingerprints.

(7) All individuals desiring to obtain a set of their inked fingerprints for purposes other than review, challenge or correction specified in section (1) of this rule will be charged a fee of \$20 for each fingerprint card provided, except as provided in ORS 181.556(1) & (2).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 166.291, 166.412, 181.537, 181.555, 181.560(4), 183.310 - 183.550, 192.440 & 194.164
Stats. Implemented: ORS 166.291, 166.412 & 181.880
Hist.: DSP 2, f. 6-14-74, ef. 7-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; OSP 1-1990, f. & cert. ef. 6-4-90; OSP 1-1991, f. 5-17-91, cert. ef. 7-1-91; OSP 1-1992, f. 3-17-92, cert. ef. 3-18-92; OSP 4-1993, f. & cert. ef. 12-20-93; OSP 4-1994, f. & cert. ef. 8-2-94; OSP 3-1996, f. 5-24-96, cert. ef. 7-1-96; OSP 1-2002, f. & cert. ef. 3-8-02; OSP 1-2005(Temp), f. & cert. ef. 3-1-05 thru 8-27-05

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

Adm. Order No.: OSFM 4-2005
Filed with Sec. of State: 2-17-2005
Certified to be Effective: 2-17-05
Notice Publication Date: 12-1-04
Rules Amended: 837-012-1230

ADMINISTRATIVE RULES

Subject: This rule revision is to increase the fees for explosives examinations and magazine registrations. The current fees for the explosive program do not cover the program costs.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-1230

Fees

- (1) Fees shall be payable to the Office of State Fire Marshal.
 - (2) Fees shall be paid at, or mailed to, the Office of State Fire Marshal and shall accompany the appropriate application.
 - (3) Payment shall be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal. If the fee is paid by either personal or business check, the Office of State Fire Marshal shall not take any action on the application until the check has cleared the bank.
 - (4) Fees are:
 - (a) \$50 — Certificate of Possession;
 - (b) \$40 — Examination;
 - (c) \$175 — Magazine Registration with Office of State Fire Marshal inspection;
 - (d) \$75 — Magazine Registration with acceptance of BATFE inspection;
 - (5) Fees are non-refundable and non-transferable.
- Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 5-2004, f. & cert. ef. 11-10-04; OSFM 4-2005, f. & cert. ef. 2-17-05

Department of Transportation Chapter 731

Adm. Order No.: DOT 2-2005

Filed with Sec. of State: 2-16-2005

Certified to be Effective: 3-1-05

Notice Publication Date: 12-1-04

Rules Adopted: 731-005-0400, 731-005-0410, 731-005-0420, 731-005-0430, 731-005-0440, 731-005-0450, 731-005-0460, 731-005-0470, 731-005-0480, 731-005-0490, 731-005-0500, 731-005-0510, 731-005-0520, 731-005-0530, 731-005-0540, 731-005-0550, 731-005-0560, 731-005-0570, 731-005-0580, 731-005-0590, 731-005-0600, 731-005-0610, 731-005-0620, 731-005-0630, 731-005-0640, 731-005-0650, 731-005-0660, 731-005-0670, 731-005-0680, 731-005-0690, 731-005-0700, 731-005-0710, 731-005-0720, 731-005-0730, 731-005-0740, 731-005-0750, 731-005-0760, 731-005-0770, 731-005-0780, 731-005-0790, 731-007-0200, 731-007-0210, 731-007-0220, 731-007-0230, 731-007-0240, 731-007-0250, 731-007-0260, 731-007-0270, 731-007-0280, 731-007-0290, 731-007-0300, 731-007-0310, 731-007-0320, 731-007-0330, 731-007-0340, 731-007-0350, 731-007-0360, 731-007-0370, 731-007-0380, 731-007-0390, 731-007-0400

Rules Repealed: 731-005-0001, 731-005-0005, 731-005-0015, 731-005-0025, 731-005-0035, 731-005-0045, 731-005-0055, 731-005-0065, 731-005-0075, 731-005-0085, 731-005-0095, 731-005-0105, 731-005-0115, 731-005-0125, 731-005-0135, 731-005-0145, 731-005-0155, 731-005-0165, 731-005-0175, 731-005-0185, 731-005-0195, 731-005-0205, 731-005-0215, 731-005-0225, 731-005-0235, 731-005-0245, 731-005-0255, 731-005-0265, 731-005-0275, 731-005-0285, 731-005-0295, 731-005-0305, 731-005-0315, 731-005-0325, 731-005-0335, 731-005-0345, 731-005-0355, 731-005-0365, 731-007-0010, 731-007-0020, 731-007-0030, 731-007-0040, 731-007-0050, 731-007-0060, 731-007-0070, 731-007-0080, 731-007-0090, 731-007-0100, 731-007-0110, 731-007-0120, 731-007-0130, 731-007-0140, 731-007-0150, 731-007-0160, 731-007-0170, 731-007-0180, 731-007-0190

Subject: During the last legislative session, ORS 279, the chapter that governs construction contracts, was revised and reorganized into three chapters - ORS 279A, ORS 279B and ORS 279C by HB 2341 (chapter 794, Oregon Laws 2003). As a result, all administrative rules adopted under authority of ORS 279 will be repealed on March 1, 2005. The text of ODOT's existing administrative rules in Chapter 731, Divisions 5 and 7, with minor changes to align language with

the new statutes, is being adopted as new rules, as required by chapter 794, Oregon Laws 2003.

Rules Coordinator: Brenda Trump—(503) 945-5278

731-005-0400

Repealed Rules

As required by OR Laws 2003, Chapter 794, Section 334, OARs 731-005-0001 through 731-005-0365 are repealed effective March 1, 2005. The repealed rules will continue to apply to the solicitation of Public Contracts first advertised, but if not advertised then entered into, before March 1, 2005.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.300 & Sec. 334 & 336, Ch. 794, OL 2003
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0410

Effective Date

OAR 731-005-0400 through 731-005-0790 become effective on March 1, 2005 and apply to Public Improvement Contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.005 & Sec. 335 & 337, Ch. 794, OL 2003
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0420

Scope

OAR 731-005-0400 through 731-005-0790 apply to all Highway Division Public Improvement Contracts (not exempted by 279C.335) entered into by the Department of Transportation under the authority of ORS 279A.050(3). These rules are adopted in place of the Attorney General Model Rules required under ORS 279A.065(1) and as allowed by ORS 279A.065(5).

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A & 279C
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0430

Definitions

All capitalized terms have the meanings set forth below, unless otherwise defined in the chapter 731, division 005 rules.

(1) Addendum or Addenda: An addition or deletion to, a material change in, or general interest explanation of the Solicitation Document. Addenda shall be labeled as such and distributed to all interested entities in accordance with these rules.

(2) Bid: A competitive Offer, binding on the Bidder and submitted in response to an Invitation to Bid.

(a) Lump Sum Bid: A Bid that is the total completed project price.

(b) Unit Price Bid: A Bid that provides unit prices based upon estimated quantities.

(3) Bidder: An Entity that submits a Bid in response to an Invitation to Bid.

(4) Closing: The date and time announced in the Solicitation Document as the deadline for submitting Offers.

(5) Competitive Range: The number of Proposers within a given scoring range ODOT will negotiate with if ODOT intends to negotiate in accordance with OAR 731-005-0650. The Competitive Range must be stated in the Solicitation Document, but will be decreased if the number of Proposers that submit Proposals is less than the specified number, or may be increased by ODOT in accordance with OAR 731-005-0650.

(6) Conduct Disqualification: A Disqualification pursuant to ORS 279C.440.

(7) Contract: The Written agreement, resulting from the Solicitation Document that defines the Work to be completed and sets forth the rights and obligations of the parties.

(8) Contract Amount: Sum of the amounts computed by multiplying the Bid item quantities by the unit price in the schedule of Contract prices of the Contract as awarded.

(9) Contract Price: The total of the awarded Bid or Proposal amount, including any approved alternates, and any fully executed change orders or amendments.

(10) Contract Review Authority: The Director of the Oregon Department of Administrative Services (DAS).

(11) Contractor: The Entity awarded the Contract in response to the Solicitation Document.

(12) DAS: Oregon Department of Administrative Services.

(13) Days: Calendar days unless otherwise specified by these rules.

(14) DBE Disqualification: A Disqualification pursuant to ORS 200.065, 200.075 or 279A.110.

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(15) Descriptive Literature: The Offeror's materials submitted to provide information concerning the products and/or services available in response to the Solicitation Document.

(16) Disqualification: The preclusion of an Entity from contracting with ODOT for a period of time. Disqualification may be a Conduct Disqualification as defined above, performance disqualification for failure to meet standards listed in OAR 734-010-0290(4), DBE Disqualification or disqualification for lack of specific demonstrated experience (special prequalification as described in OAR 734-010-0230). ODOT is authorized to disqualify an Entity in accordance with OAR 731-005-0710.

(17) Electronic Advertisement: Electronic advertisement for Offers available over the internet via:

(a) The World Wide Web; or

(b) Telnet, provided ODOT maintains an internet World Wide Web site that describes how an Entity can access the advertisement through the internet via a telnet application. ODOT may maintain the World Wide Web site directly or through any third party service provider.

(18) Electronic Data Interchange Operating Agreement or EDI Operating Agreement: A series of standards that provide computer-to-computer exchange of business documents between organizations over telephone lines or computer networks. An EDI document is a document that has been transmitted pursuant to an EDI Operating Agreement.

(19) Entity: A natural person capable of being legally bound, sole proprietorship, limited liability company, corporation, partnership, limited liability partnership, limited partnership, profit and nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.

(20) Facsimile: A document that has been transmitted to and received by ODOT in a format that is capable of being received via a device commonly known as a Facsimile machine (e.g. a Facsimile Bid). A Facsimile machine allows hard copy documents (Written, typed or drawn material) to be sent over telephone lines and printed in another location.

(21) Non-Resident Contractor: A Contractor that is not domiciled in or registered to do business in the State of Oregon. See OAR 731-005-0750.

(22) Invitation to Bid or ITB: A notice to Contractors disseminating information pertaining to bidding of Public Improvement projects including availability of Solicitation Documents.

(23) ODOT: The Oregon Department of Transportation.

(24) Offer: A Bid or Proposal as applicable.

(25) Offeror: A Bidder or Proposer as applicable.

(26) Opening: The date, time and place announced in the Solicitation Document for the public Opening of Written sealed Offers.

(27) Product Sample: 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 shall be the exact product or a representative portion of that product offered by the Offeror.

(28) Proposal: A competitive Offer, binding on the Proposer and submitted in response to a Request for Proposals. See Offer.

(29) Proposer: An Entity that submits a Proposal in response to a Request for Proposals. See Offeror.

(30) Public Improvement: Projects relating to maintenance or construction of highways, bridges, parks or other transportation facilities by or for ODOT. "Public improvement" does not include emergency Work, minor alteration, ordinary repair or maintenance necessary in order to preserve a Public Improvement.

(31) Request for Proposals or RFP: A Solicitation Document calling for Proposals.

(32) Responsible Offeror (also, Responsible Bidder or Responsible Proposer, as applicable): Is an Entity that has submitted an Offer and meets the standards set forth in OAR 731-005-0670(1)(c)(H) and that has not been disqualified by ODOT under OAR 731-005-0710.

(33) Responsive Offer (also, Responsive Bid or Responsive Proposal, as applicable): An Offer that substantially complies with applicable solicitation procedures and requirements and the Solicitation Document.

(34) Signed or Signature: Any mark, word or symbol executed or adopted by an Entity evidencing intent to be bound.

(35) Solicitation Document: Documents that define the procurement of a Public Improvement project including but not limited to Bid or Proposal booklet, plans, Specifications, requirements, provisions and includes all documents incorporated by reference.

(36) Specification: Any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, includ-

ing any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

(37) Tie Offers: Tie Offers shall have the meaning set forth in OAR 731-005-0660.

(38) Work: The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and the successful completion of all duties and obligations imposed by the Contract.

(39) Written or Writing: Conventional paper documents either manuscript or printed, in contrast to spoken words. It includes electronic transmissions if the Solicitation Document or Contract permits.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279A & 279C

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0440

Competitive Procurement

(1) Generally. In accordance with ORS 279C.300, ODOT shall procure its Public Improvements by an ITB or RFP except as otherwise allowed or required in ORS 279A.025, 279A.100, 279A.105, 279A.120(2), 279A.125, 279C.335, or 282.210.

(2) Federal Provisions. If federal funds are involved, in accordance with ORS 279A.030, federal laws, rules and regulations shall govern the provisions of these rules in the event of conflict.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279A.065 & 279C.335

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0450

Prequalification of Offeror

(1) Prequalification.

(a) Mandatory Prequalification. ODOT requires mandatory general prequalification of Offerors on forms prescribed by DAS. Annual prequalification with ODOT is required to bid on any Public Improvement project ODOT may advertise. Prequalification applications must be received by ODOT on the ODOT "Contractor's Prequalification Application" form ten Days prior to Bid Opening. The application must be completed in its entirety or a Bidder's Offer will be rejected. See OAR 734-010-0220 through 734-010-0280.

(b) Special Prequalification. ODOT must indicate in the Solicitation Document if it will require a special mandatory prequalification in addition to the general prequalification. Special prequalifications may be used for projects of a particularly complex nature or using products requiring highly specialized skills. The ITB shall indicate the requirements and time frame for special prequalifications.

(2) Standards for Prequalification. Standards for prequalification are identified in OAR chapter 734 division 10.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430 & 279C.435

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0460

Eligibility to Bid or Propose on Construction or Landscape Contracts

(1) Construction Contracts. ODOT shall not consider an Entity's Offer to do Work as a Contractor, as defined in ORS 701.005(2), unless the Entity has a current, valid certificate of registration issued by the Construction Contractors Board. Registration is not a requirement of bidding on federal funded projects.

(2) Landscape Contracts. ODOT shall not consider an Entity's Offer to do Work as a landscape Contractor as defined in ORS 671.520(2), unless the Entity has a current, valid landscape Contractor's license issued pursuant to ORS 671.560 by the State Landscape Contractors Board. Registration is not a requirement of bidding on federal funded projects.

(3) Noncomplying Entities. ODOT shall deem an Offer received from an Entity that fails to comply with this rule nonresponsive and shall reject the Offer, unless contrary to federal law.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.365, 671.530 & 701.055

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0470

Solicitation Methods

(1) Policy. It is the policy of the State of Oregon to encourage open and impartial competition in public contracting. ODOT may establish Competition by comparing price, product and service quality, product performance, and an Entity's ability to perform, technical competence and

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ability to make timely deliveries. ODOT must make every effort to construct Public Improvements at the least cost to ODOT.

(2) Solicitation Methods. ODOT may encourage meaningful competition through a variety of solicitation methods. ODOT shall choose the solicitation method that is most likely to encourage Offers representing optimal value to ODOT.

(a) ODOT may use an Invitation to Bid if ODOT believes it will receive optimal value by selecting the lowest priced Offer that meets the technical requirements of ODOT's Specifications.

(b) ODOT may use a Request for Proposal if ODOT believes it will receive optimal value:

(A) By selecting an Offer using both price and non-price related factors; or

(B) By selecting an Offer using both price and non-price related factors and permitting negotiations pursuant to OAR 731-005-0650.

(c) ODOT may permit negotiations under a Request for Proposal pursuant to OAR 731-005-0650 if:

(A) ODOT intends to consider alternative terms and conditions to reduce Agency cost or enhance the value of the product or service requested; or

(B) ODOT finds negotiation is required to effect a successful procurement (e.g. the Specifications are complex and ODOT expects numerous queries as to the proper interpretation of the Specification; the Work requires a high level of technical or managerial competence that cannot be defined adequately in the Specifications; or ODOT believes negotiations are necessary to gauge the Proposer's understanding of complex Specifications).

(3) Solicitation Documents. The Solicitation Document shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by ODOT's representatives at the conference are not binding upon ODOT unless confirmed by Written Addendum.

(B) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(C) The name and title of the authorized Agency person designated for receipt of Offers and contact person (if different);

(D) Instructions and information concerning submission requirements including the address of the office to which Offers must be delivered and any other special information, e.g., whether Offers may be submitted by Facsimile or Electronic Data Interchange (See OAR 731-005-0500 and 731-005-0510 for required provisions for Facsimile or Electronic Data Interchange);

(E) The time, date and place of Opening;

(F) The time and date of Closing after which ODOT will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement. The interval between the date of issuance of the Solicitation Document and a Closing should not be less than 14 Days for an ITB and not less than 30 Days for an RFP unless ODOT finds a shorter interval is in the public's interest. If ODOT is issuing an ITB that may result in a Contract for a Public Improvement with a value in excess of \$75,000, ODOT shall not designate a time of Closing that falls when ODOT is closed to the public or after 12 noon on Friday (see also, OAR 731-007-0260; for timing issues relating to Addenda see OAR 731-005-0580(3));

(G) The form and submission of Offers and any information required therein, including Bid or Proposal security, if any;

(H) The office where the plans and Specifications for the Work or goods may be reviewed;

(I) A statement that each Offeror to an ITB or RFP must identify whether the Bidder or Proposer is a "resident bidder," as defined in ORS 279A.120;

(J) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), a statement that no Offer will be received or considered by ODOT unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.830 or 40 U.S.C. 276a."

(K) If the Work so requires, a statement that ODOT will not receive or consider an Offer from an Entity when the Entity is not registered with

the Construction Contractors Board or is not licensed by the State Landscape Contractors Board as required by ORS 671.530;

(L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720;

(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110. (See OAR 731-005-0670(3)); and

(N) How ODOT will notify Offerors of Addenda and how ODOT will make Addenda available. See OAR 731-005-0580.

(b) Agency Need. The character of the Work or goods ODOT is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.

(c) Evaluation process.

(A) A statement that ODOT may reject any Offer not in compliance with all prescribed solicitation bidding procedures and requirements and other applicable laws, and that ODOT may reject for good cause any or all Offers upon ODOT's finding that it is in the public interest to do so;

(B) The anticipated solicitation schedule, deadlines, protest process, and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that ODOT will use to determine the Responsible Bidder with the lowest Responsive Bid or the Responsible Proposer with the best Responsive Proposal and the evaluation criteria ODOT will use to determine acceptability of any Work or goods to be purchased:

(i) If Contract award is to be based upon low Bid, ODOT shall set forth objective evaluation criteria in the Solicitation Document. Examples of such criteria that may be used in determining low Bid include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas, performance history on other private and public Contracts, experience of key personnel, adequacy of equipment and physical plant, financial wherewithal, sources of supply, references and warranty provisions. Evaluation criteria need not be precise predictors of actual future costs. However, to the extent possible, such evaluation factors shall be reasonable estimates based upon information ODOT has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposal, ODOT shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to ODOT; or

(iii) If the Solicitation Document is a Request For Proposal and ODOT is willing to negotiate terms and conditions of the Contract, ODOT must identify the specific terms and conditions in the Solicitation Document that are subject to negotiation and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions ODOT has identified as authorized for negotiation. ODOT must describe the evaluation and negotiation process in accordance with OAR 731-005-0650, including the Competitive Range; and

(D) Reference to statutory preference for materials and supplies manufactured from recycled materials under ORS 279A.125.

(d) Terms and conditions. ODOT shall include all Contract terms and conditions, including warranties and bonding requirements, ODOT considers necessary. Without limiting the preceding sentence, ODOT must include all applicable Contract provisions required by ORS 279C.500 through 279C.870 as follows:

(A) Payment of all Entities furnishing labor or material, contributions to Industrial Accident Fund, liens and withholding taxes (ORS 279C.505);

(B) If the Contract is for a Public Improvement, a condition that the Contractor shall demonstrate it has established a drug-testing program for its employees;

(C) If the Contract calls for demolition Work described in ORS 279C.510, a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective; (ORS 279C.510)

(E) Payment of claims by public officers (ORS 279C.515(1));

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(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2);

(G) Entity's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520 and 279C.540;

(I) Environmental and natural resources regulations (ORS 279C.525);

(J) Payment for medical care and providing workers' compensation (ORS 279C.530);

(K) Maximum hours and overtime (ORS 279C.540);

(L) Claims for overtime (ORS 279C.545);

(M) Prevailing wage rates (ORS 279C.800 to 279C.870);

(N) Fee paid to BOLI (ORS 279C.825);

(O) Retainage (ORS 279C.550 through 279C.570);

(P) Prompt payment policy (ORS 279C.570);

(Q) Contractor's relations with subcontractors (ORS 279C.580);

(R) Notice of claim (ORS 279C.605);

(S) With respect to state Agencies, provisions regarding use of recovered resources and recycled materials and to the extent economically feasible, use of recycled paper and PETE products (ORS 279A.150 and 279A.155);

(T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385;

(U) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2)); and

(V) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(e) If federal funds are involved, the federal laws, rules and regulations applicable to the fund requirements shall govern in the event they conflict with a provision required by ORS 279A.120 to 279A.155.

(f) Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without ODOT's prior Written consent. Unless otherwise agreed by ODOT in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If ODOT consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to ODOT for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless ODOT otherwise agrees in Writing.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279A.030, 279A.120, 279C.300, 279C.345, 279C.365, 279C.375, 279C.390, 279C.500 - 279C.870, 305.385, 701.005 & 701.055

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0480

Brand Name Products

(1) Generally, ODOT's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345.

(2) Equivalents. ODOT may identify products by brand names so long as the following language: "approved equal," "or equal," "approved equivalent," "or equivalent" or similar language is included in the Solicitation Document. ODOT shall determine, at its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.345

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0490

Bids or Proposals Are Offers

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for ODOT's acceptance for the period specified in OAR 731-005-0630. ODOT's award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(2) Responsive Offer. ODOT may award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) Contingent Offers. Except to the extent the Offeror is authorized to propose certain terms and conditions pursuant to OAR 731-005-0470 and 731-005-0650, a Offeror shall not make its Offer contingent upon ODOT's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) Offeror's Acknowledgement. By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposal permits proposal of alternative terms under OAR 731-005-0470(2), the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by ODOT in Writing.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.375, 279C.395 & 279C.440

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0500

Facsimile Bids and Proposals

(1) Agency Authorization. ODOT may authorize Offerors to submit Facsimile Offers. If ODOT determines that Bid or Proposal security is or will be required, ODOT should not authorize Facsimile Offers unless ODOT has another method for receipt of such security. Prior to authorization ODOT must determine whether ODOT's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time and establish administrative procedures and controls:

(a) For receiving, identifying, recording, and safeguarding Facsimile Offers; and

(b) To ensure timely delivery of Offers to the location of Opening and to preserve the "sealed" requirement of competitive procurement.

(2) Provisions to Be Included in Solicitation Document. In addition to all other requirements, if ODOT authorizes a Facsimile Offer, ODOT will include in the Solicitation Document provisions substantially similar to the following:

(a) A Facsimile Offer, as used in this solicitation, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by ODOT via a Facsimile machine.

(b) Offerors may submit Facsimile Offers in response to this solicitation. The entire response must arrive at the place and by the time specified in this Solicitation Document.

(c) Offerors must Sign their Facsimile Offers.

(d) ODOT reserves the right to award the Contract solely on the Facsimile Offer. However, upon ODOT's request the apparently successful Offeror shall promptly submit its complete original Signed Offer.

(e) The telephone number or numbers to which the Facsimile Offers may be submitted.

(f) ODOT is not responsible for any failure attributable to the transmission or receipt of the Facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents.

(B) Availability or condition of the receiving Facsimile machine.

(C) Incompatibility between the sending and receiving Facsimile machine.

(D) Delay in transmission or receipt of documents.

(E) Failure of the Offeror to properly identify the Offer documents.

(F) Illegibility of Offer documents.

(G) Security and confidentiality of data.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.365

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0510

Use of Electronic Data Interchange

(1) Agency Authorization. ODOT may authorize Offerors to submit EDI Offers. If ODOT determines that Bid or Proposal security is or will be required, ODOT should not authorize EDI Offers unless ODOT has a method for receipt of such security. Prior to authorizing EDI Offers, ODOT must:

(a) Establish administrative procedures and controls for receiving, identifying, recording, and safeguarding EDI Offers, to ensure timely delivery of the Offers to the Opening location and to preserve the "sealed" requirement of competitive procurement;

(b) Determine whether ODOT's procedures, controls, equipment and personnel are capable of receiving the size and volume of anticipated EDI Offers within a short period of time; and

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(c) Make available to interested vendors an EDI "trading partner" or operating agreement ("EDI Operating Agreement").

(2) EDI Operating Agreement. An EDI Operating Agreement must address the basic legal issues required to formalize an EDI relationship. The EDI Operating Agreement shall include the following:

- (a) Selection of EDI standards and methods of communication;
- (b) Allocation of responsibilities for ensuring that the equipment, software and services are operated and maintained effectively;
- (c) Procedures for making system changes that may impair the ability of the parties to communicate;
- (d) Required security and authentication procedures and services;
- (e) The method for establishing receipt of Offers and for evidencing the Offeror is bound to its Offer;
- (f) The need (if any) for maintaining confidentiality;
- (g) The allocation of liabilities for failure to meet requirements under the EDI Operating Agreement;
- (h) Methods for resolving any disputes under the EDI Operating Agreement; and

(i) Document backup and replacement procedures.

(3) Provisions to Be Included in Solicitation. In addition to all other requirements, if ODOT authorizes an EDI Offer, ODOT will include in the Solicitation Document provisions substantially similar to the following:

(a) An EDI Offer, as used in this solicitation, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by ODOT in accordance with the EDI Operating Agreement between ODOT and Offeror.

(b) An Offeror may submit an EDI Offer in response to this solicitation provided the Offeror has an effective EDI Operating Agreement with ODOT. The EDI Offer must arrive at the place and by the time specified in the Solicitation Document.

(c) An Offeror must Sign its EDI Offer in accordance with the EDI Operating Agreement between ODOT and the Offeror.

(d) ODOT reserves the right to award the Contract based solely on the EDI Offer. Unless otherwise provided under the EDI Operating Agreement, the Offeror shall promptly submit conformed Signed documents upon ODOT's request.

(e) Unless otherwise expressly agreed upon under the EDI Operating Agreement, ODOT is not responsible for any failure attributable to the transmission or receipt of the EDI Offer including, but not limited to the following:

- (A) Receipt of garbled or incomplete documents.
- (B) Availability or condition of the receiving equipment.
- (C) Incompatibility between the sending and receiving equipment.
- (D) Delay in transmission or receipt of documents.
- (E) Failure of the Offeror to properly identify the Offer documents.
- (F) Illegibility of Offer documents.
- (G) Security and confidentiality of data.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279A.065 & 279C.365

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0520

Public Notice of Solicitation

(1) Notice and Distribution Fee. ODOT shall furnish Notice to a sufficient number of Entities for the purpose of fostering and promoting competition. The Notice shall indicate where, when, how, and for how long the Solicitation Document may be obtained and generally describe the Work. The Notice may contain any other appropriate information. ODOT may charge a fee or require a deposit for the Solicitation Document. ODOT may furnish Notice using any method determined to foster and promote competition, including:

(a) Mail notice of the availability of Solicitation Documents ("Notice") to Entities that have expressed an interest in ODOT's procurements;

(b) Place Notice on the Oregon Department of Administrative Services' electronic procurement system known as the Vendor Information Program ("VIP"); or

(c) Place Notice on ODOT's internet web site.

(2) Advertising. ODOT shall advertise every solicitation for Offers, unless the Contract Review Authority has exempted the solicitation from the advertisement requirement.

(a) Unless ODOT publishes by Electronic Advertisement as permitted under subsection (b) of this section, ODOT shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional

issues and publications as ODOT may determine to be necessary or desirable to foster and promote competition.

(b) ODOT may publish by Electronic Advertisement if:

(A) ODOT has published a notice that it may publish future advertisements for Offers by Electronic Advertisement. ODOT shall publish such notice weekly, for no less than four consecutive weeks, in at least one newspaper of general circulation in the area where the business office of ODOT is located and in as many additional issues and publications as ODOT may determine to be necessary or desirable to provide notice to potential Offerors. ODOT notice shall include the World Wide Web location (i.e. Uniform Resource Locator or URL) where ODOT will publish future Electronic Advertisements or alternatively, to the Web location where ODOT will publish information on accessing the Electronic Advertisement via a telnet application;

(B) ODOT posts in its business office a notice that ODOT will publish advertisements for Offers by Electronic Advertisement. The notice shall include the World Wide Web location (i.e. Uniform Resource Locator or URL) where ODOT publishes Electronic Advertisements or alternatively, to the Web location where ODOT publishes information on accessing the Electronic Advertisement via telnet; and

(C) DAS determines Electronic Advertisement is less expensive than publishing by newspaper under subsection (a) of this section.

(c) In addition to ODOT's publication required under subsection (2)(a) or (2)(b) of this rule, ODOT shall also publish advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.

(d) All advertisements for Offers shall set forth:

(A) The scheduled Closing, that shall not be less than five Days after the date of the last publication of the advertisement;

(B) The date that Entities must file applications for prequalification if prequalification is a requirement and the class or classes of Work for which Entities must be prequalified;

(C) The nature of the Work to be performed or the goods to be purchased;

(D) The office where the Solicitation Documents may be reviewed;

(E) The name, title and address of ODOT person authorized to receive Offers;

(F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276(a)).

(3) Posting Advertisement for Offers. ODOT shall post a copy of each advertisement for Offers at the principal business office of ODOT. An Offeror may obtain a copy of the advertisement for Offers upon request.

(4) Minority, Women Emerging Small Business. ODOT shall provide timely notice of all solicitations to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds \$5,000.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 200.035 & 279C.360

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0530

Offer Preparation

(1) Instructions. An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.

(2) Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(3) Documents. An Offeror shall provide ODOT with all documents and Descriptive Literature required under the Solicitation Document.

(4) Facsimile or EDI Submissions. If the Solicitation Document permitted Facsimile or EDI Offers under OAR 731-005-0470(3)(a)(D), an Offeror may submit its Offer by Facsimile or EDI. ODOT shall not consider Facsimile or EDI Offers unless authorized by the Solicitation Document.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.365

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0540

Offeror Submissions

(1) Product Samples and Descriptive Literature. ODOT may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. ODOT will dispose of Product Samples, or return or make available for return

ADMINISTRATIVE RULES

Product Samples to the Offeror in accordance with the Solicitation Document.

(2) Identification of Offers.

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by ODOT, whichever is applicable. If ODOT permits Facsimile or EDI Offers in the Solicitation Document, the Offeror may submit and identify Facsimile or Electronic Data Interchange Offers in accordance with the Solicitation Document.

(b) ODOT is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) Receipt of Offers. The Offeror is responsible for ensuring ODOT receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.365

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0550

Bid or Proposal Security

(1) Security Amount. If ODOT requires Bid or Proposal security, it shall be 10% of the Offeror's Bid or Proposal. ODOT shall not use Bid or Proposal security to discourage competition. ODOT shall expressly provide for any Bid or Proposal security in its Solicitation Document.

(2) Public Improvement Contracts. Unless ODOT has otherwise exempted a solicitation or class of solicitations from Bid or Proposal security pursuant to ORS 279C.390, ODOT shall require Bid or Proposal security for its solicitation of Offers for Public Improvements. ODOT may require Bid or Proposal security even if it has exempted a class of solicitations from Bid or Proposal security.

(3) Form of Bid or Proposal Security. Accompany each Proposal with a guaranty in the amount of 10% of the total amount of the Proposal. The guaranty shall be either a surety bond or security in the form of a cashier's check or certified check made payable to the "Oregon Department of Transportation." If a surety bond is submitted, use ODOT's standard Proposal bond form, which is included with the Proposal booklet. Submit the original of the bond with the surety company's seal affixed.

(a) Acceptable surety companies are limited to those authorized to do business in the State of Oregon.

(b) ODOT shall return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been executed and a performance bond provided (if such performance bond is required), or after all Offers have been rejected. ODOT may return the Bid or Proposal security of unsuccessful Offerors prior to award if the return does not prejudice Contract award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

(c) The Offeror shall forfeit Bid or Proposal security after award if the Offeror fails to Sign the Contract promptly and properly.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.365, 279C.380, 279C.385 & 279C.390

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0560

Pre-Offer Conferences

(1) Purpose. ODOT may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the procurement requirements, obtain information, or to conduct site inspections.

(2) Required Attendance. ODOT may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) Scheduled Time. If ODOT holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) Statements Not Binding. Statements made by ODOT's representative at the pre-Offer conference do not change the Solicitation Document unless ODOT confirms such statements with a Written Addendum to the Solicitation Document.

(5) Agency Announcement. ODOT must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with OAR 731-005-0470(3)(a)(A).

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.365

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0570

Solicitation Protest; Request for Change; Request for Clarification

(1) Protest.

(a) Delivery. An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to ODOT not less than 10 Days prior to Closing.

(b) Content of Protest.

(A) An Offeror's Written protest shall include:

(i) A detailed statement of the legal and factual grounds for the protest:

(ii) A description of the resulting prejudice to the Offeror; and

(iii) A statement of the desired changes to the Contract terms and conditions, including Specifications.

(B) An Offeror shall mark its protest as follows:

(i) Solicitation Specification or Contract Provision Protest; and

(ii) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(2) Request for Change.

(a) Delivery. An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to ODOT not less than 10 Days prior to Closing;

(b) Content of Request or Change.

(A) An Offeror'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.

(B) An Offeror shall mark its request for change as follows:

(i) Solicitation Specification or Contract Provision Request for Change; and

(ii) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(3) Agency response. ODOT is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. ODOT shall provide notice to the applicable Entity if it entirely rejects a protest. If ODOT agrees with the Entity's request or protest, in whole or in part, ODOT shall either issue an Addendum reflecting its determination under OAR 731-005-0580 or cancel the Solicitation under OAR 731-005-0720.

(4) Extension of Closing. If ODOT receives a Written request for change or protest from an Offeror in accordance with this rule, ODOT may extend Closing if ODOT determines an extension is necessary to consider the request or protest and to issue an Addendum, if any, to the Solicitation Document.

(5) Clarification. Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that ODOT clarify any provision of the Solicitation Document. ODOT's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on ODOT unless ODOT amends the Solicitation Document by Addendum.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.305, 279C.345, 279C.365 & 279C.460

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0580

Addenda to a Solicitation Document

(1) Issuance; Receipt. ODOT may change a Solicitation Document only by Written Addenda.

(2) Notice and Distribution. ODOT shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in OAR 731-005-0520(1). The Solicitation Document shall specify how ODOT will provide notice of Addenda and how ODOT will make the Addenda available (see OAR 731-005-0470(3)(a)(N)). For example, "Agency will not mail notice of Addenda, but will publish notice of any Addenda on Agency's WEB site. Addenda may be downloaded off ODOT's WEB site. Offerors should check ODOT's WEB site weekly until the week of Closing and daily the week of the Closing."

(3) Timelines; Extensions. ODOT shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. ODOT should extend the Closing if ODOT determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, ODOT shall not issue Addenda less than 48 hours before the Closing unless the Addendum also extends the Closing.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change

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or protest to the Addendum as provided in OAR 731-005-0570(2) through (5), within 24 hours following issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under OAR 731-005-0570, whichever date is later. ODOT shall consider only an Offeror's request for change or protest to the Addendum; ODOT shall not consider a request for change or protest to matters not added or modified by the Addendum.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.065 & 279C.395
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0590

Pre-Opening Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to ODOT in accordance with OAR 731-005-0530 and 731-005-0540, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification;

(b) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(2) Withdrawals:

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, including the Offeror's Bid or Proposal document number if one has been assigned, Signed by an individual who is authorized to sign the Offer, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by ODOT prior to the Closing. Proof of authorization to sign the Offer must accompany the withdrawal request. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority.

(b) ODOT may release an unopened Offer, withdrawn under subsection (a) of this section, to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal;

(B) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(3) Documentation. ODOT shall include all documents relating to the modification or withdrawal of Offers in the appropriate solicitation file.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.065, 279C.360, 279C.365, 279C.375 & 279C.395
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0600

Receipt, Opening, and Recording of Offers

(1) Receipt. ODOT shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. ODOT shall not open the Offer or modification, but shall store it in a secure place until Opening. If ODOT inadvertently opens an Offer or a modification prior to the Opening, ODOT shall reseal and store the opened Offer or modification for Opening. ODOT shall document the resealing for the solicitation file (e.g. "Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) Opening and recording. ODOT shall publicly open Offers including any modifications made to the Offer pursuant to OAR 731-005-0590. In the case of Invitations to Bid, to the extent practicable, ODOT shall read aloud the name of each Bidder, the total of each Bid, and such other information as ODOT considers appropriate. In the case of Requests for Proposals, if the Solicitation Document so provides, ODOT will not read Offers aloud.

(3) Availability. After Opening, ODOT shall make the Offers available for public inspection except for those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 to 646.475. To the extent ODOT determines such designation is not in accordance with applicable law, ODOT shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other non-confidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.365 & 279C.395
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0610

Late Offers, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. ODOT shall not consider late Offers, withdrawals or modifications except as permitted in OAR 731-005-0620 or 731-005-0650.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.365 & 279C.395
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0620

Mistakes

(1) General. To protect the integrity of the competitive solicitation process and to assure fair treatment of Offerors, ODOT shall carefully consider whether to permit waiver, correction or withdrawal for certain mistakes.

(2) Agency Treatment of Mistakes. ODOT shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If ODOT discovers certain mistakes in an Offer after Opening, but before award of the Contract, ODOT may take the following action:

(a) ODOT may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(b) ODOT may correct a clerical error if the intended Offer and the error are evident on the face of the Offer, or other documents submitted with the Offer, and the Offeror confirms ODOT's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example, a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices shall prevail over extended prices.

(c) ODOT may permit an Offeror to withdraw an Offer based on other errors only if the Offeror shows by clear and convincing evidence to the satisfaction of ODOT:

(A) The nature of the error on the face of the Offer or documents submitted with the Offer, pursuant to the solicitation requirements; and

(B) That the error is not a judgment error, minor informality or clerical error.

(3) Rejection for Mistakes. ODOT shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer, pursuant to solicitation requirements.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.375 & 279C.395
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0630

Time for Agency Acceptance

An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.375
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0640

Extension of Time for Acceptance of Offer

ODOT may request, orally or in Writing, that Offerors extend, in Writing, the time during which ODOT may consider their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.375
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

ADMINISTRATIVE RULES

731-005-0650

Offer Evaluation and Award

(1) General. If awarded, ODOT shall award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the best, Responsive Proposal. ODOT may award by item, groups of items or the entire Offer provided such award is consistent with the Solicitation Document and in the public interest.

(2) Agency Evaluation. ODOT shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. ODOT shall not evaluate an Offer using any other requirement or criterion.

(3) Offeror Submissions.

(a) ODOT may require an Offeror to submit product samples, descriptive literature, technical data, or other material and may also require any of the following prior to award:

(A) Demonstration, inspection or testing of a product prior to award for characteristics such as quality or workmanship;

(B) Examination of such elements as appearance, finish, taste, or feel; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) ODOT shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. ODOT shall reject an Offer providing any product that does not meet the Solicitation Document requirements. ODOT's rejection of an Offer because it offers nonconforming Work or goods is not Disqualification and is not appealable under ORS 279C.445.

(4) Evaluation of Bids. ODOT shall use only objective criteria to evaluate Bids as set forth in the ITB. ODOT shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid. In determining the lowest Responsive Bid, ODOT shall add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides unless prohibited by federal requirements. ODOT shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process.

(5) Evaluation of Proposals.

(a) ODOT shall only evaluate Proposals in accordance with criteria set forth in the RFP and applicable law. ODOT shall evaluate Proposals to determine the Responsible Proposer submitting the best Responsive Proposal. ODOT may seek information from a Proposer only to clarify the Proposer's Proposal. Such clarification shall not vary, contradict or supplement the Proposal. ODOT shall not seek clarification of a nonresponsive Proposal. A Proposer must submit Written and Signed clarifications and such clarifications become part of the Proposer's Proposal. Unless ODOT permitted negotiation in accordance with OAR 731-005-0470 in its Request for Proposals, ODOT may only negotiate:

(A) The statement of Work, including schedule, and

(B) The Contract Price as it is affected by negotiating the statement of Work.

(b) If ODOT permitted negotiation in the Request for Proposals in accordance with OAR 731-005-0470, ODOT shall evaluate Proposals and may negotiate as follows:

(A) If the Solicitation Document provided that negotiation may occur at Agency's discretion, ODOT may forego negotiations and evaluate all Proposals in accordance with subsection (a) of this section;

(B) Unless the solicitation is canceled, after the Opening ODOT will evaluate all Proposals in accordance with the evaluation criteria. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, ODOT will determine the Proposers in the Competitive Range. ODOT may increase the Competitive Range if ODOT's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number greater than the initial Competitive Range;

(C) ODOT shall establish a negotiation team tailored for the solicitation. ODOT's team may include but is not limited to legal, technical and negotiating personnel;

(D) In addition to the statement of Work, including schedule, and the Contract Price as it is affected by negotiating the statement of Work, ODOT shall only negotiate other terms and conditions expressly authorized for negotiation under the Request for Proposals. A Proposer shall only submit alternative terms and conditions to the terms and conditions ODOT expressly authorized for negotiation under the Request for Proposal;

(E) ODOT shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest ODOT's evaluation and determination of the Competitive Range in accordance with OAR 731-005-0690. All

Proposals are open for public inspection subject to the Oregon Public Records Law;

(F) After the protest period provided in accordance with paragraph (5)(b)(E) of this rule expires, or after ODOT has provided a final response to any protest, whichever date is later, ODOT may begin negotiating with Proposers in the Competitive Range. ODOT's negotiation team shall not favor any particular Proposer. ODOT may negotiate Contract Price, designated terms and conditions and the statement of Work, including schedule. However, ODOT may only negotiate Contract Price to the extent the Proposer would not be excluded from the Competitive Range based on ODOT's evaluation criteria set forth in the Solicitation Document. ODOT may only negotiate an alternative term or condition submitted by a Proposer if the alternative term or condition is reasonably related to the term or condition ODOT authorized as negotiable. ODOT shall not negotiate any other terms or conditions set forth in the Request for Proposals;

(G) ODOT may evaluate Offers negotiated with Proposers in the Competitive Range at any time during the negotiation process to determine if ODOT will:

(i) Continue negotiating with a particular Proposer;

(ii) Terminate negotiations with a particular Proposer and continue negotiating with other Proposers in the Competitive Range; or

(iii) Conclude negotiations with all remaining Proposers in the Competitive Range in accordance with paragraph (5)(b)(H) of this rule.

(H) ODOT may terminate negotiations with a Proposer in the Competitive Range at any time. If ODOT does not cancel the solicitation at the conclusion of ODOT's negotiation with all remaining Proposers in the Competitive Range, ODOT shall score the Proposals in the Competitive Range based upon the evaluation criteria in the Request for Proposals;

(I) ODOT shall provide Written notice of intent to award the Contract to all Proposers in the Competitive Range. An unsuccessful Proposer may protest ODOT's evaluation and determination of the Competitive Range in accordance with OAR 731-005-0690; and

(J) Nothing in section (5) of this rule shall restrict or prohibit ODOT from canceling the solicitation at any time in accordance with OAR 731-005-0720.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.300, 279C.335, 279C.365, 279C.375 & 279C.395

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0660

Tie Offers

(1) Definition. Tie Offers are low tie Responsive Bids from Responsible Bidders or high tie Responsive Proposals from Responsible Proposers that are identical in price, fitness, availability and quality.

(2) Award. If awarded, ODOT shall award the Contract based on the following order of precedence:

(a) For projects not involving federal funds ODOT shall prefer the Offer of the Offeror whose principal offices or headquarters are located in Oregon;

(b) If a Tie Offer remains after ODOT applies subsection (a) of this section, ODOT shall award the Contract by drawing lots among any tied Oregon Offerors if no federal funds are a part of the project. Such Offerors shall be given notice and an opportunity to be present when the lots are drawn; or

(c) If a Tie Offer remains after ODOT applies subsection (b) of this section and none of the tied Offerors are located in Oregon or the project has federal funding, ODOT shall award the Contract by drawing lots among any tied Offerors. Such Offerors shall be given notice and an opportunity to be present when the lots are drawn.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279A.120 & 279C.375

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0670

Rejection of an Offer

(1) Rejection of an Offer.

(a) ODOT may reject any Offer upon finding that to accept the Offer may impair the integrity of the procurement process or that rejecting the Offer is in the public interest.

(b) ODOT shall reject an Offer upon ODOT's finding that the Offer:

(A) Is contingent upon ODOT's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications);

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;

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(D) Offers Work or goods that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Documents;

or

(G) Is not in substantial compliance with all prescribed public solicitation procedures.

(c) ODOT shall reject an Offer upon ODOT's finding that the Offeror:

(A) Has not been prequalified under ORS 279C.430 and ODOT required mandatory prequalification;

(B) Has been Disqualified;

(C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries has declared and the Contract is for a Public Work;

(D) Is listed as not qualified by the Construction Contractors Board;

(E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;

(F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(G) Has failed to provide the certification required under section (3) of this rule; or

(H) Is nonresponsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. ODOT uses a prequalification process as described in OAR Chapter 734 Division 10 to determine if a Contractor is responsible. Before awarding a Contract, ODOT must have information that indicates that the Offeror meets the applicable standards of responsibility. To be a Responsible Offeror, ODOT must determine that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all contractual responsibilities;

(ii) Has a satisfactory record of Contract performance. ODOT should carefully scrutinize an Offeror's record of Contract performance if the Offeror is or recently has been materially deficient in Contract performance. In reviewing the Offeror's performance, ODOT should determine whether the Offeror's deficient performance was expressly excused under the terms of Contract, or whether the Offeror took appropriate corrective action. ODOT may review the Offeror's performance on both private and public Contracts in determining the Offeror's record of Contract performance. ODOT shall make its basis for determining an Offeror nonresponsible under this paragraph part of the solicitation file;

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if ODOT determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to ODOT. ODOT may find an Offeror nonresponsible based on the lack of integrity of any Entity having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Entity). The standards for Conduct Disqualification under OAR 731-005-0710 may be used to determine an Offeror's integrity. ODOT shall make its basis for determining that an Offeror is nonresponsible under this paragraph part of the solicitation file;

(iv) Is qualified legally to Contract with ODOT; and

(v) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by ODOT concerning responsibility, ODOT shall base the determination of responsibility upon any available information, or may find the Offeror nonresponsible.

(2) Form of Business Entity. For purposes of this rule, ODOT may investigate any Entity submitting an Offer. The investigation may include that Entity's officers, directors, owners, affiliates, or any other Entity acquiring ownership of the Entity to determine application of this rule or to apply the disqualification provisions of ORS 279C.440 to 279C.450 and OAR 731-005-0710.

(3) Certification of Non-Discrimination. The Offeror shall certify and deliver to ODOT Written certification, as part of the Offer, that the Offeror has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279A.105, 279A.110, 279C.375 & 279C.395

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0680

Rejection of All Offers

(1) Rejection. ODOT may reject all Offers for good cause upon ODOT's Written finding it is in the public interest to do so. ODOT shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(2) Criteria. ODOT may reject all Offers upon a Written finding that:

(a) The content of or an error in the Solicitation Document, or the solicitation process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) ODOT cancels the solicitation in accordance with OAR 731-005-0720; or

(f) Any other circumstance indicating that awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.395

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0690

Protest of Contractor Selection, Contract Award

(1) Purpose. An adversely affected Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of ODOT's Contractor selection or Contract award decision.

(2) Notice of Intent to Award. Unless otherwise provided in the Solicitation Document, ODOT shall provide notice of the intent to award on the ODOT web site. ODOT's award shall not be final until the later of the following:

(a) Three working days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

(b) ODOT provides a Written response to all timely-filed protests that denies the protest and affirms the award.

(3) Notice of Competitive Range. Unless otherwise provided in the RFP, ODOT shall provide Written notice to all Proposers of ODOT's determination of the Proposers included in the Competitive Range. ODOT's notice of the Proposers included in the Competitive Range shall not be final until the later of the following:

(a) Ten Days after the date of the notice, unless otherwise provided therein; or

(b) Until ODOT provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

(4) Right to Protest Award.

(a) An adversely affected Offeror may submit to ODOT a Written protest of ODOT's Notice of Intent to Award Bid within three working days after issuance of the Notice of Intent to Award Bid, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected only if the Offeror is one of the three apparent low Bidders on an Invitation to Bid or three highest scoring Proposers in the case of an RFP.

(d) ODOT shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document.

(5) Right to Protest Competitive Range.

(a) An adversely affected Proposer may submit to ODOT a Written protest of ODOT's decision to exclude the Proposer from the Competitive Range within seven Days after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document.

(b) The Proposer's protest shall be in Writing and must specify the grounds upon which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring

ADMINISTRATIVE RULES

Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

(A) Their Proposals were not responsive; or

(B) ODOT 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 and would have, but for such substantial violation, been included in Competitive Range.

(d) ODOT shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest ODOT's decision to not increase the Competitive Range above the Competitive Range set forth in the RFP.

(6) Authority to Resolve Protests. The ODOT Executive Deputy Director, or designee, has the authority to settle or resolve a Written protest submitted in accordance with the requirements of this rule.

(7) Decision. If a protest is not settled, the ODOT Executive Deputy Director or designee, shall promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) Contract Execution. The successful Offeror shall promptly execute the Contract after the award is final. ODOT shall execute the Contract only after it has obtained all applicable required documents and approvals.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.375, 279C.385 & 279C.460

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0700

Negotiation with Bidders

(1) Bids. ODOT shall not negotiate with any Bidder prior to award of Contract. After award of the Contract, ODOT and Contractor may only modify the Contract as specified in the Contract.

(2) Requests for Proposals. ODOT may only negotiate with Proposers in accordance with OAR 731-005-0470 and 731-005-0650.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.300, 279C.305, 279C.335, 279C.365 & 279C.375

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0710

Disqualification of an Entity

(1) Authority. ODOT may disqualify an Entity from consideration of award of ODOT's Contracts after providing the Entity with notice and a reasonable opportunity to be heard in accordance with section (3) of this rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, ODOT may disqualify an Entity for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private Contract or subcontract, or in the performance of such Contract or subcontract;

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Entity's responsibility as a Contractor;

(C) Conviction under state or federal antitrust statutes; or

(D) Violation of a Contract provision that is regarded by ODOT to be so serious as to justify Disqualification under OAR 734-010-0340.

(b) Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, ODOT may disqualify an Entity's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, ODOT may disqualify an Entity upon finding that:

(i) The Entity fraudulently obtained or retained or attempted to obtain or retain or aided another person to fraudulently obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise;

(ii) The Entity knowingly made a false claim that any person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Entity has been disqualified by another Agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, ODOT may disqualify an Entity upon finding that:

(i) The Entity has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise;

(ii) The Entity exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise;

(iii) The Entity uses a disadvantaged, minority, women or emerging small business enterprise to perform services under a Contract or to provide supplies under a Public Improvement Contract to meet an established DBE/MBE/WBE/ESB goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the Contract; or

(iv) If an Entity is Disqualified for a DBE Disqualification under ORS 200.075, ODOT shall not permit such Entity to participate in ODOT's Contracts.

(C) For a DBE Disqualification under ORS 279A.110, ODOT may disqualify an Entity if ODOT finds that the Entity discriminated against minority, women, or emerging small business enterprises in awarding a subcontract under a prior Contract with ODOT.

(2) Notice of Intent to Disqualify. ODOT shall notify the Entity in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

(a) State that ODOT intends to disqualify the Entity;

(b) Set forth the reasons for the Disqualification;

(c) Include a statement of the Entity's right to a hearing if requested in Writing within the time stated in the notice and that if ODOT does not receive the Entity's Written request for a hearing within the time stated, the Entity shall have waived its right to a hearing;

(d) Include a statement of the authority and jurisdiction under which the hearing will be held;

(e) Include a reference to the particular sections of the statutes and rules involved;

(f) State the proposed Disqualification period; and

(g) State that the Entity may be represented by legal counsel.

(3) Hearing. ODOT shall schedule a hearing upon ODOT receipt of the Entity's timely request. ODOT shall notify the Entity of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

(4) Notice of Disqualification. ODOT will notify the Entity in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:

(a) The effective date and period of Disqualification;

(b) The grounds for Disqualification; and

(c) A statement of the Entity's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the Disqualified Entity must notify ODOT in Writing within three business days after receipt of ODOT's notice of Disqualification if the Entity intends to appeal ODOT's decision.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 200.065, 200.075, 279A.110, 279C.440, 279C.445 & 279C.450

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0720

Cancellation of Solicitation

(1) Cancellation in the Public Interest. ODOT may cancel a Solicitation for good cause if ODOT finds that cancellation is in the public interest. ODOT's reasons for cancellation shall be made part of the solicitation file.

(2) Notice of Cancellation. If ODOT cancels a solicitation prior to Opening, ODOT shall provide notice of cancellation. Such notice of cancellation shall:

(a) Identify the Solicitation; and

(b) If appropriate, explain that an opportunity will be given to compete on any re-solicitation.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.395

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0730

Disposition of Offers if Solicitation Canceled

(1) Prior to Opening. If ODOT cancels a Solicitation prior to Opening, ODOT will return each Offer it received to the Offeror unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, ODOT will open the Offer to determine the source and then return it to the Offeror.

(2) After Opening. If ODOT rejects all Offers, ODOT will retain all such Offers as part of ODOT's solicitation file.

ADMINISTRATIVE RULES

(3) Cancellation of Award. Without liability to ODOT, ODOT may cancel award of Contract at any time before the Contract agreement is executed by all parties to the Contract, upon finding it is in the public interest to do so.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.395
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0740

Documentation of Award

(1) Basis of Award. After award, ODOT shall make a record showing the basis for determining the successful Offeror part of ODOT's solicitation file.

(2) Contents of Award Record. ODOT's record shall include:

(a) Bids.

(A) Completed Bid tabulation sheet; and

(B) Written justification for any rejection of lower Bids.

(b) Proposals.

(A) The completed evaluation of the Proposals;

(B) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and

(C) If ODOT permitted negotiations in accordance with OAR 731-005-0470, ODOT's completed evaluation of the initial Proposals and ODOT's completed evaluation of final Proposals.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.430
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0750

Non-Resident Contractor

If the Contract Amount exceeds \$10,000 and the Contractor is a Non-Resident Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Amount, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to ODOT. ODOT, upon awarding the Contract, shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.120
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0760

Availability of Award Decisions

(1) Contract Documents. To the extent required, ODOT shall deliver to the successful Offeror, a Signed purchase order, price agreement, or other Contract document(s), as applicable.

(2) Notification to Unsuccessful Offerors. An Entity may obtain tabulations of awarded Bids or evaluation summaries of Proposals for a nominal charge, in person or by submitting to ODOT a Written request accompanied by payment. Such request shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, tabulations of Bids and Proposals awarded are available on-line through the ODOT web page.

(3) Availability of Solicitation Files. ODOT shall make completed solicitation files available for public review at ODOT.

(4) Copies from Solicitation Files. Any Entity may obtain copies of material from solicitation files upon payment of a reasonable copying charge.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.365
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0770

Performance Security

(1) Public Improvement Contracts. Unless ODOT waives the required performance and payment bonds under ORS 279C.380(4), or DAS exempts a Contract or classes of Contracts from the required performance bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to ODOT a performance bond and a payment bond.

(2) Requirement for Surety Bond. The Contractor shall use ODOT's standard forms, that are bound in the Contract booklet. The amount of each bond shall be equal to the Contract Amount. The surety company's authorized attorney in fact shall sign the performance bond and the payment bond. The surety company's seal shall be affixed to each bond. A power of attorney for the attorney in fact shall be attached to the bonds in the Contract booklet. Include performance/payment bond number. Bonds cannot be can-

celed by the Contractor or the surety, nor can they be released by ODOT due to possible claims.

(3) Time for Submission. The apparent successful Offeror must furnish the performance/payment security as required by the Solicitation Document. If the Offeror fails to furnish the security as requested, ODOT may reject the Offer and award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at ODOT's discretion, the Offeror shall forfeit its Bid or Proposal security.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.375 & 279C.390
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0780

Records Maintenance; Right to Audit Records

(1) Records Maintenance; Access. Contractors and subcontractors shall maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles. In addition, Contractors and subcontractors shall maintain all other records necessary to clearly document:

(a) Their performance; and

(b) Any claims arising from or relating to their performance under a public Contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a Contract (the books, fiscal records and all other records, hereafter referred to as "Records") accessible to ODOT at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) Inspection and Audit. ODOT may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Entity that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Entity must provide cost or pricing data under a Contract, the Entity shall maintain such Records that relate to the cost or pricing data for three years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.

(3) Records Inspection; Contract Audit. ODOT, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in section (1) of this rule. The Contractor and subcontractor shall maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of three years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in Writing.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.030, 279C.375 & 279C.440
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-005-0790

Termination of Contract

Termination of the Contract shall not relieve the Contractor of responsibility for completed portions of the Work, or the Contractor's surety from the obligations arising from the Work performed. The Solicitation Document shall describe the terms and conditions of termination.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.365, 279C.375 & 279C.390
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0200

Repealed Rules

As required by OR Laws 2003, Chapter 794, Section 334, OAR 731-007-0010 through 731-007-0190 are repealed effective March 1, 2005. The repealed rules will continue to apply to the solicitation of Public Contracts first advertised, but if not advertised then entered into, before March 1, 2005.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.300 & Sec. 334 & 336, Ch. 794, OL 2003
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0210

Effective Date

OAR 731-007-0200 through 731-007-0400 become effective on March 1, 2005 and apply to Public Contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.005 & Sec. 335 & 337, Ch. 794, OL 2003
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

ADMINISTRATIVE RULES

731-007-0220

Application

In addition to the requirements set forth in chapter 731, division 5, and the definitions therein, OAR 731-007-0200 through 731-007-0400 apply to Public Improvement Contracts. In the event of conflict or ambiguity, the more specific requirements of the rules in Division 7 take precedence over the more general requirements of the Division 5 rules.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0230

Competitive Procurement

ODOT shall solicit Bids for Public Improvement Contracts by Invitation to Bid (ITB), except as otherwise allowed or required pursuant to ORS 279A.030, 279A.100, or 279C.335. See OAR 731-007-0340 through 731-007-0400 regarding the use of Alternative Contracting Methods.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.335
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0240

Mandatory Provisions

In addition to the Bidder qualification, selection, rejection, and Disqualification criteria applicable to all public Contracts, certain criteria apply specifically to Public Improvement Contracts. Likewise, in addition to provisions required in all solicitations for public Contracts and resulting Contracts, certain provisions must be included in Public Improvement solicitations and resulting Contracts. Those criteria and mandatory provisions are contained in division 5, and are referenced in this rule for convenience:

- (1) Eligibility to bid or propose. See OAR 731-005-0460(1) (Construction Contracts).
 - (2) Solicitation Document statement of required certification or licensing. See OAR 731-005-0470(3)(a)(K).
 - (3) Solicitation Document terms and conditions:
 - (a) Demonstration of drug testing program. See OAR 731-005-0470(3)(d)(B).
 - (b) Liability for late payment. See OAR 731-005-0470(3)(d)(F).
 - (c) Right to file complaints with Construction Contractors Board. See OAR 731-005-0470(3)(d)(G).
 - (d) Environmental and natural resources regulations. See OAR 731-005-0470(3)(d)(I).
 - (e) Prevailing wage rates. See OAR 731-005-0470(3)(d)(M).
 - (f) Fee paid to BOLI. See OAR 731-005-0470(3)(d)(N).
 - (g) Retainage. See OAR 731-005-0470(3)(d)(O).
 - (h) Prompt payment policy. See OAR 731-005-0470(3)(d)(P).
 - (i) Contractor's relations with subcontractors. See OAR 731-005-0470(3)(d)(Q).
 - (j) Certification of compliance with tax laws. See OAR 731-005-00470(3)(d)(T).
 - (4) Advertising of solicitation in trade newspaper. See OAR 731-005-0520(2)(c).
 - (5) Bid or Proposal security. See OAR 731-005-0550(2).
 - (6) Deadline for delivering request for change or protest of Specification or Contract terms and conditions. See OAR 731-005-0570(1)(a).
 - (7) Rejection of individual Bids or Proposals. See OAR 731-005-0670.
 - (8) Standards for DBE Disqualification. See OAR 731-005-0710(1)(b)(B)(i) and (iii).
 - (9) Performance security. See OAR 731-005-0770(1).
- Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0250

Bid or Proposal Evaluation Criteria

(1) General. A Public Improvement Contract, if awarded, shall be awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal, provided that such Entity is not listed by the Construction Contractors Board as disqualified to hold a Contract for a Public Improvement. See OAR 731-005-0650, and Rules for Alternative Contracting Methods at OAR 731-007-0360 to 731-007-0400.

(2) Bid Evaluation Criteria. Invitations to Bid may solicit lump-sum Offers, unit-price Offers, or a combination of the two:

(a) If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if ODOT elects not to award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the Solicitation Documents shall provide the criteria for selection; and

(b) If the Bid includes unit pricing for estimated quantities, the total Bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by ODOT, for the purpose of comparing Bids. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern. See OAR 731-005-0620(2)(b).

(3) Proposal Evaluation Criteria. If DAS has exempted the procurement of a Public Improvement from the competitive bidding requirements of ORS 279C.335(1), and has authorized ODOT to use an Alternative Contracting Method under ORS 279C.335(3), ODOT shall set forth the evaluation criteria in the Solicitation Documents if they differ from those in Division 5 (or the Specifications). See OAR 731-007-0390, ORS 279C.335(2) and (3).

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.065 & 279C.335
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0260

Disclosure and Substitution of First-Tier Subcontractors

(1) Required Disclosure. Within two working hours of the Bid Closing on an ITB for a Public Improvement having a Bid price exceeding \$100,000, a Bidder shall submit to ODOT a disclosure form as described by this rule. The disclosure form shall identify any first-tier subcontractors (those Entities that would be contracting directly with the prime Contractor) that will be furnishing labor or labor and materials on the Contract, if awarded, whose subcontract value would be equal to or greater than:

- (a) Five percent of the total Contract Bid, but at least \$15,000; or
- (b) \$350,000 regardless of the percentage of the total Bid.

(2) Disclosure Deadline and Bid Opening. For each Bid Proposal or ITB to which this rule applies, ODOT shall:

(a) Receive bids until the time identified as Closing time and at the location described in the ITB and immediately thereafter publicly open the bids;

(b) Set the Bid Opening at the time and place identified in the ITB; and

(c) Consider for Contract award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Agency.

(3) Bidder Instructions and Disclosure Form. For the purposes of this rule, ODOT in its solicitation shall:

(a) Prescribe the disclosure form that must be utilized; and

(b) Provide instructions in a notice substantially similar to the following:

(A) "Instructions for First-Tier Subcontractor Disclosure Bidders are required to disclose information about certain first-tier subcontractors when the Contract value for a Public Improvement is greater than \$100,000 (see ORS 279C.370). Specifically, when the Bid of a first-tier subcontractor is greater than or equal to:

(i) 5% of the project Bid, but at least \$15,000; or

(ii) \$350,000 regardless of the percentage, you must disclose the following information about that subcontract within two (2) working hours of Bid Closing:

(aa) The subcontractor's name;

(bb) The category of work the subcontractor will be performing; and

(cc) The dollar value of the subcontract.

(B) If you will not be using any subcontractors that are subject to the above disclosure requirements, you are required to indicate "NONE" on the accompanying form.

ODOT MUST REJECT THE BID(S) OF A BIDDER WHO, IF REQUIRED TO SUBMIT THIS DISCLOSURE FORM, FAILS TO SUBMIT THE DISCLOSURE FORM WITH THE REQUESTED INFORMATION BY THE STATED DEADLINE. (See OAR 731-007-0270).

(4) To determine disclosure requirements, ODOT recommends that you disclose subcontract information for any subcontractor as follows:

(a) Determine the lowest possible Bid. That will be the base Bid amount less all alternate deductive Bid amounts (exclusive of any options that can only be exercised after Bid award).

(b) Provide the required disclosure information for any first-tier subcontractor whose potential Contract services (i.e., subcontractor's base Bid

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amount plus all alternate additive Bid amounts, exclusive of any options that can only be exercised after Contract award) are greater than or equal to:

(i) 5% of the lowest Bid amount, but at least \$15,000; or
(ii) \$350,000, regardless of the percentage. Total all possible Work for each subcontractor in making this determination (e.g., if a subcontractor will provide \$15,000 worth of services on the base Bid and \$40,000 on an additive alternate, then the potential amount of subcontractor's services is \$55,000. Assuming that \$55,000 exceeds 5% of the lowest Bid, provide the disclosure for both the \$15,000 services and the \$40,000 services).

(5) For determination of compliance with the disclosure requirements, ODOT will use the total Bid amount submitted by the contractor as verified by ODOT."

(6) Submission. A Bidder shall submit the disclosure form required by this rule within two working hours of Bid Closing in the manner specified by the ITB.

(7) Late Submission. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the separate disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract award.

(8) Substitution. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. ODOT does not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. However, ODOT is not precluded from making related inquiries or investigating complaints in order to enforce Contract provisions that require compliance generally with laws, rules and regulations.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.370 & 279C.585
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0270

Contract Suspension; Termination Procedures

(1) Suspension of Work. In the event ODOT suspends performance of Work for any reason considered by ODOT to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time, and to reasonable compensation for costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) Termination of Contract by mutual agreement for reasons other than default.

(a) The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) ODOT suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) When a Contract, or any divisible portion thereof, is terminated pursuant to section (2) of this rule, ODOT shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. ODOT shall also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) Public interest termination by ODOT. ODOT will include in its Contracts, terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event ODOT unilaterally terminates the Contract for any reason considered by ODOT to be in the public interest.

(4) Responsibility for completed Work. Termination of the Contract or a divisible portion thereof pursuant to this rule shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) Remedies cumulative. ODOT may, at its discretion, avail itself of any or all rights or remedies set forth in Division 7 rules, in the Contract, or available at law or in equity.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.650 - 279C.670
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0280

Waiver of Delay Damages Against Public Policy

Any clause in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from ODOT's unreasonable delay in performing the Contract is void and unen-

forceable, as against public policy. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration or mediation, providing other procedures for settling Contract disputes, or providing for reasonable liquidated damages, are enforceable.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats Implemented: ORS 279C.315
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0290

Retainage

(1) Withholding of Retainage. ODOT may retain payment but shall not retain an amount in excess of 5 percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily or if all Work on a subcontract is complete, upon the Contractor's submission of Written application containing the surety's Written approval, ODOT may, in its discretion, reduce or eliminate retainage on any remaining progress payments. ODOT shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, ODOT may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. ODOT may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) Deposit in interest-bearing accounts. ODOT shall deposit cash retainage in an interest-bearing account through the State Treasurer, for the benefit of ODOT. Earnings on such account shall accrue to the Contractor.

(3) Alternatives to cash retainage. In lieu of cash retainage to be held by ODOT, the Contractor may substitute one of the following:

(a) Deposit of securities:

(A) The Contractor may deposit bonds or securities with ODOT or in any bank or trust company to be held for the benefit of ODOT. In such event, ODOT shall reduce the retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds and securities deposited or acquired in lieu of retainage shall be of a character approved by the Oregon Department of Administrative Services, including but not limited to:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or its agencies.

(iii) Obligations of any corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(C) Upon ODOT's determination that all requirements for the protection of ODOT's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond: ODOT, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to ODOT in lieu of all or a portion of funds retained or to be retained. ODOT requires that the first \$10,000 of retainage be held as cash, before the retainage bond takes effect. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(4) Recovery of costs. ODOT may recover from the Contractor all costs incurred in the proper handling of cash retainage and securities, by reduction of the final payment.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.560, 279C.570 & 701.420
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0300

Contractor Progress Payments

(1) Progress payments. Each month ODOT shall make a progress payment based upon an estimated percentage of the Contract Work completed. Progress payments will not be made for less than \$1,000 in any given month unless requested by the Contractor. At ODOT's discretion, this request may also include the value of material to be incorporated in the completed Work, that has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, ODOT will make a progress payment to the Contractor, which shall be equal to the value of completed Work:

(a) Less those amounts that have been previously paid;

(b) Less other amounts that may be deductible or owing and due to ODOT for any cause; and

(c) Less the appropriate amount of retainage.

(2) Progress payments do not mean acceptance of Work. Progress payments shall not be construed as an acceptance or approval of any part of

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the Work, and shall not relieve the Contractor of responsibility for defective workmanship or material.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.570
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0310

Interest

(1) Prompt payment policy. ODOT shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

(2) Interest on progress payments. Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after Agency approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent.

(3) Interest on final payment. Final payment on the Contract Price, including retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.

(4) Settlement or judgment interest. In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at two times the discount rate but not to exceed 30% on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date and accruing from the later of:

(a) The Due Date of any Progress Payment received under the Contract for the period in which such Work was performed; or

(b) Thirty Days after the date on which the claim for payment under dispute was presented to ODOT by the Contractor in Writing or in accordance with applicable provisions of the Contract.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.570
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0320

Final Inspection

(1) Notification of Completion; inspection. The Contractor shall notify ODOT in Writing when the Contractor considers the on-site Contract Work completed. Within 15 Days of receiving the Contractor's notice, ODOT will inspect the project and project records, and will either accept the Work or notify the Contractor of remaining Work to be performed.

(2) Acknowledgment of acceptance. When ODOT finds that all Work required under the Contract, both on-site and administrative, has been completed satisfactorily, ODOT shall acknowledge acceptance of the Work in Writing.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.570
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0330

Agency Payment for Unpaid Labor or Supplies

(1) Contract incomplete. If the Contract is still in force, ODOT may, in accordance with ORS 279C.515(1), pay a valid claim to the Entity furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. Under terms of the Contract it is the Contractor's responsibility to make payment on any such claims. The Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.

(2) Contract completed. If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. ODOT shall not make payments to subcontractors or suppliers for Work already paid for by ODOT.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279C.515
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0340

Purpose

These rules are intended to provide guidance regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as referenced in ORS 279C.335(3)(a). Those methods include, but are not limited to, Design/Build and A plus B forms of contracting.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.065 & 279C.335
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0350

Definitions

In addition to those definitions at OAR 731-005-0430, the following definitions shall apply to OARs 731-007-0340 to 731-007-0400, unless the context requires otherwise:

(1) Alternative Contracting Methods: Innovative techniques for obtaining Public Improvement Contracts, utilizing processes other than the traditional method of design-bid-build with award based solely on price (in which a final design is issued with formal Bid documents, construction services are obtained by sealed Bid awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design/Build and Cost Plus Time forms of contracting, which are specifically addressed in these rules.

(2) Design/Build: A form of contracting that results in the construction Contractor providing or obtaining specified design services, participates on the project team with ODOT, and manages both design and construction. In this form of Contract, a single Entity provides ODOT with all of the services necessary to both design and construct the project.

(3) Cost Plus Time: A Bid process (also known as A plus B) where time is assigned a monetary value and is Bid along with the Work and materials.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.065 & 279C.335
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0360

Use of Alternative Contracting Methods

(1) Competitive Bidding Exemptions. ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted or an individual Contract has been exempted in accordance with ORS 279C.335 and any applicable DAS rules. Alternative Contracting Methods are therefore an exception to the prescribed public contracting practices in Oregon, and their use must be justified in accordance with the public contracting law and these rules. See OAR 731-007-0370 regarding required findings.

(2) Post-Project Evaluation. ORS 279C.355 requires that ODOT prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 for which the competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in ODOT's best interest to use an Alternative Contracting Method. The evaluation must be delivered to the DAS Director within 30 Days of the date ODOT "accepts" the Public Improvement project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the project occurs on the latter of the date of final payment or the date of final completion of the Work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

(a) Financial information, consisting of cost estimates, any guaranteed maximum price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption findings.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.065, 279C.335 & 279C.355
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0370

Findings

(1) When findings are required under ORS 279C.335(2) and 279C.335(3)(b) to exempt a Contract or class of Contracts from competitive bidding requirements, the "substantial cost savings" criterion at ORS 279C.335(2)(b) requires consideration of the type, cost, amount of the Contract, number of Entities available to bid, and "such other factors as may be deemed appropriate."

(2) Likewise, the statutory definition of "findings" at ORS 279C.330 means the justification for ODOT's conclusion that includes, but is not limited to, information regarding eight identified areas.

(3) Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings" requirement may be addressed by a combination of:

(a) Specified findings that address the factors and other information specifically identified by statute; and

(b) Additional findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and

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drawbacks of particular Alternative Contracting Methods. To the extent practicable, such findings should relate back to the specific characteristics of the project or projects at issue in the exemption request.

(4) The criteria at ORS 279C.335(2)(a) that it is “unlikely” that the exemption will “encourage favoritism” or “substantially diminish competition” may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the procurement will be formally advertised, that competition will be obtained, and that award will be made based upon identified selection criteria.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.065 & 279C.335
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0380

Pricing Mechanisms

(1) A Request for Proposals may result in a lump sum Contract Price, as in the case of competitive bidding. Alternatively, a cost reimbursement Contract may be negotiated.

(2) Economic incentives or disincentives may be included to reflect stated ODOT purposes related to time of completion, safety or other public contracting objectives, including total least cost mechanisms such as life cycle costing.

(3) When cost reimbursement Contracts are utilized, ODOT shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.065 & 279C.335
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0390

RFP Process

ODOT may utilize the RFP process for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with ORS Chapter 279C and OAR chapter 731 division 5.

(1) Proposal Evaluation. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Proposal evaluation shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

- (a) Be reasonable estimates based on information available to ODOT;
- (b) Treat all Proposals equitably; and
- (c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to ODOT. See ORS 279C.305(1).

(2) Evaluation Factors.

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality.

(b) In Design/Build contracting, in addition to subsection (a) of this section, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, the ability to respond to the technical complexity or unique character of the project, project management including coordination and integration of multiple disciplines, the time required to commence and complete the improvement, design/builder team experience and related matters that affect cost or quality.

(3) Contract Negotiations. Contract terms may be negotiated to the extent allowed by the RFP and these rules, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See OAR 731-005-0470(3). Terms that may be negotiated consist of details of Contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality. Negotiations must always be in keeping with the least cost policy for public improvements.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.065, 279C.305 & 279C.335
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

731-007-0400

Design/Build

(1) General. The Design/Build form of contracting, as defined in OAR 731-007-0350(2), has technical complexities that are not readily

apparent. ODOT shall only utilize this contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the Design/Build process ODOT must be able to reasonably expect the following types of benefits:

(a) Obtaining, through a Design/Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control, and required documentation as a fully integrated function with a single point of Contractor responsibility;

(b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;

(c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;

(d) Shortening project duration as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a final design, or where a design solution is still required (as in complex or phased projects); and

(e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) Authority. Agencies shall utilize the Design/Build form of contracting only in accordance with the requirements of Division 7 rules. See particularly OAR 731-007-0360 on “Use of Alternative Contracting Methods.”

(3) Selection. Design/Build selection criteria may include those factors set forth in OAR 731-007-0390(2).

(4) Qualification Based Selection (QBS). Inapplicable. Because the value of construction services predominates the Design/Build form of contracting, and ODOT is not issuing a personal service Contract, the QBS process mandated by ORS 279C.110 for State Agencies is not applicable. See ORS 279C.100(5) and 279C.110(2)(a).

(5) Licensing. Where the Design/Build Contractor is not a licensed or registered design professional, the Design/Build process contemplates that state licensing and registration requirements related to architectural and engineering services may be fulfilled by design professionals who are employees, subcontractors, joint venturers or in other lawful business relationships with the Design/Build Contractor. Under this approach, Design/Build Contractors are not required to fulfill design licensing or registration requirements at the time of submitting Proposals, but shall specifically identify the licensed design professionals by individual or firm names.

(6) Performance Security. ORS 279C.375(3)(b) provides that for Design/Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(7) Contract Requirements. ODOT shall conform its Design/Build contracting practices to all of the following requirements:

(a) Design Services. The level or type of design services required must be clearly defined within the Solicitation Documents and Contract, along with a description of the level or type of design services previously performed for the project. The services to be performed shall be clearly designated as either design Specifications or performance standards, and performance measurements must be identified.

(b) Professional Liability. The Contract shall clearly identify the liability of design professionals with respect to the Design/Build Contractor and ODOT, as well as requirements for professional liability insurance.

(c) Risk Allocation. The Contract shall clearly identify the extent to which ODOT requires an express indemnification from the Design/Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.

(d) Warranties. The Contract shall clearly identify any express warranties made to ODOT regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper

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design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

(e) Incentives. The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.

(f) Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the solicitation process on the basis that ODOT is benefited from such deliverables.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065
Stats. Implemented: ORS 279A.065, 279C.100-110 & 279C.335
Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05

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

Filed with Sec. of State: 2-16-2005

Certified to be Effective: 3-1-05 thru 8-27-05

Notice Publication Date:

Rules Adopted: 731-146-0010, 731-146-0015, 731-146-0020, 731-146-0025, 731-146-0030, 731-146-0040, 731-146-0050, 731-146-0060, 731-146-0070, 731-146-0080, 731-146-0090, 731-146-0100, 731-146-0110, 731-146-0120, 731-146-0130, 731-146-0140, 731-147-0010, 731-147-0020, 731-147-0030, 731-147-0035, 731-147-0040, 731-147-0050, 731-147-0060, 731-148-0010, 731-148-0020, 731-149-0010

Rules Suspended: 731-010-0030

Subject: Chapter 794, Oregon Laws 2003 (HB 2341) replaced ORS Chapter 279, the Public Contracting Code, with Chapters 279A, 279B and 279C effective March 1, 2005. The law specifies that all rules adopted pursuant to ORS Chapter 279 expire March 1, 2005. Therefore, ODOT is adopting OAR Chapters 146, 147, 148 and 149 to adopt the Department of Justice new model public contracting rules, which replace the existing model contract rules and additional provisions that apply to ODOT contracts. These rules cover general provisions related to public contracting; the selection process for architectural, engineering and land surveying and related services; procurement of goods and services; and public contracts for construction services. The current rule, adopting model rules, OAR 731-010-0030 will be suspended effective March 1, 2005.

Rules Coordinator: Brenda Trump—(503) 945-5278

731-010-0030

Architectural, Engineering and Related Services Contracting

The Department of Transportation adopts OAR 125-025-0000 through 125-025-0090 and 125-025-0110 (effective January 1, 2002), the Department of Administrative Services rules, Consultant Selection Procedures: Architect, Engineer and Related Professional Consultants. The Model Rules adopted by the Attorney General under ORS 279.049 (OAR 137-035) shall not apply to the Department of Transportation.

Stat. Auth.: ORS 184.616, 184.619, 279.051 & ORS 279.712
Stats. Implemented: ORS 279.049, 279.051 & ORS 279.712
Hist.: DOT 3-1994, f. & cert. ef. 11-22-94; DOT 1-2000(Temp), f. 1-19-00, cert. ef. 2-12-00 thru 6-29-00; administrative correction 9-16-00; DOT 5-2000, f. & cert. ef. 12-19-00; DOT 1-2003(Temp), f. & cert. ef. 1-16-03 thru 7-14-03; DOT 2-2003, f. & cert. ef. 3-24-03; Suspended by DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0010

Application

The Oregon Department of Transportation adopts OAR 137-046-0100 through 137-046-0480 (effective March 1, 2005), the Department of Justice Model Rules, General Provisions Related to Public Contracting including the additional provision provided in these rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.030 & 279A.065
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0015

Special Approvals for Public Contracts When Required

(1) When Attorney General legal sufficiency approval is required under ORS 291.047, the Oregon Department of Transportation (ODOT) must seek legal approval.

(2) When ODOT contracts for services normally provided by another Contracting Agency or for services for which another Contracting Agency has statutory responsibilities, ODOT is required to seek the other Contracting Agency's approvals. Examples of these special approvals include, but are not limited to:

(a) Oregon Department of Administrative Services (DAS), Risk Management Division for providing tort liability coverage.

(b) DAS, Information Resource Management Division (IRMD), Publishing and Distribution for printing services.

(c) DAS, State Controller's Division for accounting services.

(d) Office of the Treasurer, Debt Management Division for financial and bond counsel services (bond counsel services also require the approval of the Attorney General); and

(e) DAS, Information Resources Management Division (IRMD) for information-system related and telecommunications services. ODOT is also encouraged to use the DAS IRMD's Enterprise Planning and Policy Section as a resource in carrying out information system-related projects. This may include:

(A) Assistance to ODOT in developing Statements of Work related to information system projects;

(B) Reviews to assure consistency with State standards and direction; and

(C) A listing of vendors that provide information system-related services.

(f) Attorney or Financial Auditing Services.

(3) The Attorney General has sole authority to contract for attorney services. Exceptions may be granted in Writing on a case-by-case basis only by the Attorney General.

(4) The Secretary of State Audits Division has sole authority to contract for financial auditing services. Exceptions may be granted in Writing on a case-by-case basis only by the Secretary of State Audits Division.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.140(2)
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0020

Reporting Requirements for Personal Services Contracts

(1) Application. For the purposes of Division 146 only, "Personal Services" includes Architectural, Engineering and Land Surveying Services and Related Services.

(2) The Department of Administrative Services (DAS) State Procurement Office maintains an electronic reporting system called the Oregon Procurement Information Network (ORPIN) and a report form for reporting Personal Services Contracts. ODOT must submit this report form to the DAS State Procurement Office for each Contract and subsequent Contract Amendment. The report form must include ODOT's name, not-to-exceed amount of the Contract, the name of the Contractor, the duration of the Contract, and its basic purpose. Whenever ODOT pays in a calendar year under a Personal Services Contract for services historically performed by its employees more than ODOT would have paid to its employees performing the same Work, ODOT must so report to DAS and include in the report a statement of justification for the greater costs, pursuant to ORS 279A.140(2)(h)(A)(i).

(3) ODOT must keep in the Procurement File all Personal Services Contracts, justification statements, when applicable, documentation of the selection process for each Contract, and the report forms as follows:

(a) For ten (10) years beyond each Contract's expiration date for Architectural, Engineering and Land Surveying Services and Related Services.

(b) For six (6) years beyond each Contract's expiration date for all other Personal Services Contracts.

(c) All such files may be destroyed after ten (10) years or six (6) years, respectively, or in accordance with another provision of law.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.140(h)(A)
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0025

Independent Contractor Status For Personal Services Contracts

(1) ODOT must develop a Statement of Work for services that will not result in an employee relationship with the potential Contractor. ODOT and the Contractor(s) must complete the Independent Contractor Certification, whether by form or an Architectural, Engineering and Land Surveying Services and Related Services Contract provision (Contract Provision). If the individual cannot certify Independent Contractor status, ODOT may not contract with the individual using a Personal Services Contract, including Architectural, Engineering and Land Surveying Services and Related Services, except as otherwise allowed in section (7) of this Rule.

(2) An Independent Contractor Certification by form or Contract Provision must be part of each contract.

(3) A corporation is not considered an employee of ODOT. If the Contractor is a corporation, the Independent Contractor Certification is not

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required. However, if the Contractor is a professional corporation, the Independent Contractor certification is required. A professional corporation is a corporation organized under ORS Chapter 58, or a similar statute in another state, and is used by certain professions. The corporation representative's certification of corporation status or a certification by ODOT verifying the Contractor's status with the Corporation Division of the Secretary of State's Office, must be submitted upon Contract approval.

(4) If the nature of the services or project is such that an employee/employer relationship will exist, ODOT must hire the individual through normal personnel procedures.

(5) The Contract must include the Contractor's legal name, address, and Social Security or federal tax identification number.

(6) The Contract must provide that the Contractor is responsible for federal Social Security, except those categories excluded by law, and for any federal or state taxes applicable to the contract payment.

(7) When an individual cannot certify that he or she satisfies four or more of the Independent Contractor criteria of the Independent Contractor Certification, ODOT may contract with the individual only if ODOT's Designated Procurement Officer, in consultation with the Department of Justice, approves the Contract upon a determination by ODOT's Designated Procurement Officer that the Contractor is an Independent Contractor and the Contract will not result in undue risk to the State.

Stat. Auth.: ORS 279A.140(2)(b)(A)(i)
Stats. Implemented: ORS 279A.140 & 279A.070
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0030 Procurement Files

(1) This Rule applies only to Procurements exceeding the Intermediate Procurement Threshold for Goods or Services; the Informal Selection Threshold for Architectural, Engineering, and Land Surveying Services; and the Intermediate Procurement Threshold for Public Improvements pursuant to OAR 137-047-0270, 137-048-0210, and 137-049-0160, respectively.

(2) Each Procurement File must contain:

- (a) An executed Contract, if awarded;
- (b) The record of the actions used to develop the Contract;
- (c) A copy of the Solicitation, if any;

(d) Any required findings or statement of justification for the selection of the Contractor and sourcing method pursuant to ORS 279A.200 through 279A.220 (Cooperative Procurement); ORS 279B.055 through 085 (seven methods for Goods or Services); ORS 279C.100 through 279C.125 (Architectural, Engineering and Land Surveying and Related Services); or ORS 279C.300 through 279C.450 (Public Improvements); and

(e) Documentation of Contract Administration pursuant to this rule.

(3) Each Procurement File may also contain, if required by ORS or Division 146 rules:

- (a) A list of prospective Contractors notified of any Solicitation.
- (b) The method used to advertise or notify prospective Contractors.
- (c) A copy of each Offer that resulted in the Award of a Contract.
- (d) The method of evaluating Offers, the results of the evaluation, and basis of selection.

(e) The record of any Negotiation of the Statement of Work and results.

(f) A record of all material Communications regarding the Solicitation by interested Contractors.

(g) All information describing how the Contractor was selected, including the basis for awarding the Contract.

(h) A copy of the Request for Special Procurement, if any.

(4) ODOT must maintain Procurement Files, including all documentation, for a period not less than six (6) years, except for ten (10) years beyond each Contract's expiration date for Architectural, Engineering and Land Surveying Services and Related Services or for another period in accordance with another provision of law.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0040 Contract Administration; General Definitions

(1) "Contract Administration" means all functions related to a given Contract between ODOT 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.

(2) "Contract terms and conditions" means the entire Contract document including but not limited to:

- (a) The Contract;

(b) A Solicitation Document incorporated by reference in the Contract; and

(c) All attachments, exhibits or other requirements specifically referenced in the Contract.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0050 Contract Administration; General Provisions

(1) Authority. ODOT must conduct all Procurements, including Contract Administration, for Goods or Services, including Architectural, Engineering and Land Surveying Services and Related Services, and Public Improvements, pursuant to ORS 279A.050 and ORS 279A.075.

(2) Contract Administrator. ODOT must appoint, in Writing, a Contract Administrator as an ODOT representative for each Contract. The Contract Administrator may delegate in Writing a portion of the Contract Administrator's responsibilities to a technical representative for specific day-to-day administrative activities for each Contract.

(3) Documentation of Contract Administration. This section applies only to the following Procurements pursuant to OAR 125-047-0270, 125-048-0210, and 125-049-0160, respectively:

(a) Procurements exceeding the Intermediate Procurement Threshold for Goods or Services.

(b) Informal Selection Threshold for Architectural, Engineering, and Land Surveying Services and Related Services.

(c) Intermediate Procurement Threshold for Public Improvements.

(4) Requirements. Documentation of Contract Administration is a part of the Procurement File in accordance with OAR 731-046-0030, and this documentation must include:

- (a) An executed Contract;
 - (b) The record of the actions used to administer the Contract; and
 - (c) The Contract Administrator and any technical representative delegate's, together with a description of their delegated duties.
- (d) Documentation of Contract Administration may also include, if any:

- (A) Amendments;
- (B) Claims related to the Contract;
- (C) Release of claims documents;
- (D) Contract close-out documents; and
- (E) Other documents related to Contract Administration.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0060 Payment Authorization of Cost Overruns for Goods or Services including Architectural, Engineering and Land Surveying Services and Related Services Contracts

(1) Payments on Contracts that exceed the maximum contract consideration require approval from ODOT's Designated Procurement Officer and may require approval from the Department of Justice pursuant to OAR 137-045-0010 et seq. Approval may be provided if there is compliance with all of the following:

(a) The Original Contract was duly executed and, if required, approved by the Attorney General.

(b) The Original Contract has not expired or been terminated as of the date Written approval to increase the Contract amount is granted.

(c) The cost overrun is not associated with any change in the Statement of Work set out in the Original Contract.

(d) 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 cost overruns that:

(A) Address emergencies arising in the course of the Contract that require prompt action to protect the Work already completed.

(B) Comply with official or judicial commands or directives issued during contract performance.

(C) Ensure that the purpose of the Contract will be realized;

(e) 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.

(f) Except for the cost overrun, the Contract and its objective are within the statutory authority of ODOT and ODOT currently has funds available for payment under the Contract.

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(g) An officer or employee of ODOT has presented a Written report to ODOT's Designated Procurement Officer within 60 days of the discovery of the overrun that states the reasons for the cost overrun and demonstrates to the satisfaction of ODOT's Designated Procurement Officer that the Original Contract and the circumstances of the overrun satisfy the conditions stated above.

(h) ODOT's Designated Procurement Officer approves in Writing the payment of the overrun, or such portion of the overrun amount as ODOT's Designated Procurement Officer determines may be paid consistent with the conditions of this Rule. If ODOT's Designated Procurement Officer 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.

(2) ODOT must obtain an Attorney General's approval of the Contract Amendment, if such approval is required by ORS 291.047, before making any overrun payment.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0070

Ethics in Public Contracting – Policy

Oregon Public Contracting is a public trust. ODOT and Contractors involved in Public Contracting must safeguard this public trust.

Stat. Auth.: ORS 244.010 - 244.400, 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 244.010 - 244.400, 279A.065(5)(a), 279A.070, 279A.140
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0080

Ethics in Selection and Award of Public Contracts

(1) ODOT officers, employees or agents involved in the process of the selection and award of Public Contracts must carefully review the provisions of ORS 244.040.

(2) ODOT officers, employees and agents are prohibited from soliciting or receiving gifts, which means something of economic value given to a public official or the public official's relative without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, and which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials.

(3) ODOT officers, employees and agents are prohibited from using their official position for personal or financial gain.

(4) ODOT officers, employees and agents are prohibited from using confidential information gained in the course of the screening and selection procedures for personal or financial gain.

Stat. Auth.: ORS 244.010 - 244.400, 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 244.010 - 244.400, 279A.065(5)(a), 279A.070, 279A.140
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0090

Ethics in Appointments to Advisory Committees

ODOT's Designated Procurement Officer or a delegate may 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.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0100

Non-retaliation

Retaliation against anyone who complies with the Public Contracting Code and Rules in Division 146 related to Ethics is prohibited. Any officer, employee or agent of ODOT or Contractor who engages in retaliation action will be subject to Penalties pursuant to ORS 279A.990, 244.350 to 244.400 and related rules. Also, any Contractor who engages in a retaliation action may be debarred.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0110

Ethics in Specification Development

(1) ODOT and Contractors must not develop Specifications that primarily benefit a Contractor, directly or indirectly, to the detriment of ODOT or the best interest of the State.

(2) ODOT must not develop Specifications that inhibit or tend to discourage Public Contracting with Qualified Rehabilitation Facilities (QRF) under ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045 where those Specifications inhibit or tend to discourage the acquisition of QRF-produced Goods or Services without reasonably promoting the satisfaction of bona fide, practical procurement needs of ODOT.

(3) ODOT and Contractors must not develop Specifications that inhibit or tend to discourage Public Contracting under other public procurement laws or policies of the Department.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0120

Ethics in Sole Source

ODOT may not select a Sole-Source Procurement pursuant to ORS 279B.075 and avoid a competitive Procurement if the purpose of the selection is to primarily benefit the Contractor, directly or indirectly, to the detriment of ODOT or the best interest of the State.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279B.075, 279A.140
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0130

Fragmentation

A Procurement may not be artificially divided or fragmented so as to constitute a Small Procurement, pursuant to ORS 279B.065, or an Intermediate Procurement, pursuant to ORS 279B.070.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279B.065
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-146-0140

Ethics in ODOT and Contractor Communications

(1) Research Phase. ODOT is encouraged to conduct research with Contractors who can meet the State's needs. This research includes but is not limited to:

- (a) Meetings;
- (b) Industry presentations; and
- (c) Demonstrations with Contractors that, in ODOT's discretion, may be able to meet ODOT's needs.

(2) ODOT must document the items discussed during the research phase of Solicitation development. The research phase ends the day of a Solicitation release or request for a Quote pursuant to an Intermediate Procurement, unless the Solicitation or Intermediate Procurement provides for a different process that permits on-going research.

(3) Solicitation and Contracting Phase. Any communication between ODOT and Contractors regarding a Solicitation, that occurs after the Solicitation release or request for a Quote and before the Award of a Contract, must only be made within the context of the Solicitation Document or Intermediate Procurement requirements.

(4) Communication may allow for Discussions, Negotiations, Addenda, Contractor questions, and ODOT's answers to Contractor questions about terms and conditions, Specifications, Amendments, or related matters. During this phase, telephone conversations and meetings must be documented in the Procurement File. Written inquiries regarding the Solicitation should be responded to by ODOT in Writing.

(5) A record of all material Communications regarding the Solicitation by interested Contractors must be made a part of the Procurement File pursuant to OAR 731-146-0030.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-147-0010

Application

The Oregon Department of Transportation adopts OAR 137-047-0000 through 137-047-0800 (effective March 1, 2005) with the exception of 137-047-0270(4), the Department of Justice Model Rules, Public Procurements for Goods or Services General Provisions including the additional provisions provided in these rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.015
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-147-0020

Life Cycle Costing

(1) Policy. Life Cycle Costing provides an acquisition method that is consistent with the concept of sustainability and also drives the concept of

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lowest cost of ownership and best value of the equipment purchased. When planning the award method of an Invitation to Bid (ITB) or Request for Proposal (RFP) for products or equipment, ODOT may consider using Life Cycle Costing whenever the costs of system operation, support, and disposal, and other quantifiable costs are significant in comparison with the cost of acquisition.

(2) For the purpose of chapter 731, division 147 rules, the following definitions apply:

(a) "Life-Cycle Cost" means the total cost to ODOT of acquiring, operating, supporting and (if applicable) disposing of the items being acquired.

(b) "Life Cycle Costing" means the various quantifiable cost factors, in addition to the acquisition cost of Goods or Services (also referred to in division 147 as "product, equipment, and service, separately or in any combination thereof").

(3) Concept. Insofar as division 147 rules are concerned, the concept of Life Cycle Costing will be limited to begin with the acquisition of the product or service, include all the associated cost(s) of ownership, such as purchase price, shipping, maintenance and repair, longevity, and include disposition cost(s) at the end of life. The initial acquisition price is adjusted with additional cost streams expected to occur over the anticipated life of the product or equipment. These additional cost streams must be clearly thought out costs or adjustments, and must be based upon reasonable assumptions. Cost streams are discrete elements of costs that relate to the particular purchase considered for Life Cycle Costing. In some cases cost streams may include negative costs or savings that are expected to result in a particular cost stream.

(a) Acquisition costs are costs associated with acquiring an item for ODOT's use. For complex items, several Contracts may be required and costs may involve research and development as well as production, delivery, and installation of the item.

(b) Typical cost streams may include:

(A) Switching cost are costs associated with changing from current equipment or products to another model or brand of equipment or products. Typically such costs may include: removal, shipping, training, and replacement of supporting supplies. They may also consider increased project management or additional transition time.

(B) Operating and support costs are all costs, including third party contract costs, associated with equipment, supplies, utilities, fuel, and services needed to operate and maintain an operational system.

(C) Disposal costs are costs, including third party contract costs, associated with removing equipment from service and disposing of it. Evaluations that consider Life-Cycle Cost should also consider any significant salvage or resale value at the time of disposal. The DAS Oregon Property Services may help with estimating values, and with adherence to current rules regarding disposition of State property.

(4) Solicitation Requirements. Life Cycle Cost methodology is permitted under this rule for use in either an ITB or an RFP. When conducting a Life Cycle Costing-based award, the Solicitation must:

(a) Advise prospective offerors how Life Cycle Costing will be considered in an award decision:

(A) Awards may be made based on lowest evaluated cost resulting from Life Cycle Costing. Under this approach, the evaluation includes Life Cycle Costs in the Solicitation issued by ODOT;

(B) Awards of Invitations to Bid to the lowest Bidder include the total Life Cycle Costs as a part of the bid evaluation methodology and award. The lowest total Life Cycle Cost is considered the low Bid; or

(C) Awards of RFPs may include a Life Cycle Costing award factor in two ways:

(i) The RFP may include Life Cycle Costs as a part of the total points awarded for costs. In this method, all Life Cycle Costs are calculated and the lowest total Life Cycle Cost is awarded the maximum points allocated for cost in the RFP; or

(ii) The RFP may include a separate Life Cycle Cost Factor that is assessed as weight or points and is considered in addition to other factors in the proposal evaluation methodology. As a separate evaluation factor, it may be used in addition to costs, when the cost factor does not consider Life Cycle Costing elements.

(b) Provide for adjustments to the cost stream when Life Cycle Costs continue over a period of years, for one or more of the following:

(A) Time value of money;

(B) Cost uncertainty; or

(C) Inflation factors.

(5) Factors in the Solicitation. To the extent ODOT considers practical, the Solicitation must provide relevant information (e.g., projected item

usage, operating environment, the operating period, and other information that will be considered in the evaluation of the offer). ODOT may include projections and estimates of life and cycle times from independent third party sources. The Solicitation must describe how Life Cycle Cost will be applied in the award process. Factors not described in the Solicitation may not be used in the evaluation.

(6) Elements that may be used in Awards. Solicitations must describe what relevant costs, along with appropriate information to support life costs, the Offer must provide. Typical elements used in Life Cycle Costing Awards may include:

(a) Average unit price, including (when appropriate) recurring and nonrecurring

production costs;

(b) Delivery, shipping and transportation costs;

(c) Switching costs prepared by ODOT that include a reasonable estimate of what it will cost to switch from a current product or brand to another;

(d) Unit operating and support costs (e.g., manpower, energy, parts requirements, scheduled maintenance, and training);

(e) Unit disposal costs (e.g., the cost of removing equipment from the Contracting Agency facility);

(f) Unit salvage or residual value; and

(g) Related information as requested to support costs such as testing and operational data.

(7) Award Decision. Award of an Invitation to Bid using Life Cycle Cost methods must be made to the responsible firm whose responsive offer provides the lowest overall cost of ownership in accordance with the Life Cycle Cost evaluation factors listed in the solicitation document. In the case of a Life Cycle Cost Request for Proposal, award must be made to the responsible firm whose responsive offer, after consideration of Life Cycle Cost factors as a part of price evaluation, and other factors listed in the Solicitation Document are determined to be the most Advantageous or best Proposal for ODOT.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.025, 279B.270, 279B.280

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-147-0030

Emergency Procurements Process

(1) ODOT may award a Public Contract as an Emergency Procurement pursuant to the requirements of OAR 137-047-0280 and 137-049-0150. When an Emergency Procurement is authorized, the Procurement must be made with competition that is practicable under the circumstances.

(2) Pursuant to the requirements of this rule, ODOT may, in its discretion, enter into a Public Contract without competitive Solicitation if an emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a Contract to remedy the condition.

(3) Regardless of the dollar value of the Contract, when entering into an Emergency Contract, ODOT must:

(a) Make a Written declaration of emergency, including findings describing the emergency circumstances that require the prompt performance of the Contract, stating the anticipated harm from failure to establish the Contract on an expedited basis; and

(b) Encourage competition that is practicable under the circumstances; and

(c) Record the measures taken under subsection (b) of this section to encourage competition; the amounts of the Bids, Quotes or Proposals obtained, if any; and the reason for selecting the Contractor.

(4) Pursuant to ORS 279B.080, the head of the Contracting Agency, or person designated under ORS 279A.075, must declare the existence of the emergency, as required by Subsection (3)(a), which must authorize ODOT to enter into an Emergency Contract.

(5) Any Contract awarded under the division 147 rules must be awarded within 60 days following the declaration of the emergency unless an extension has been granted by the head of ODOT, or Person designated.

(6) For Contracts greater than \$5,000, ODOT must report a summary of the Contract on the Oregon Procurement Information Network (ORPIN) maintained by the DAS State Procurement Office and provide the Department of Justice, Attorney General with a copy of the Written documentation required in section (3) of this rule within a reasonable period of time or thirty (30) Days, whichever is less, following the declaration of an emergency. ODOT must maintain a copy of the report in its Emergency Procurement File.

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(7) Emergency Public Contracts are exempted from Department of Justice legal sufficiency review pursuant to OAR 137-045-0070.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.080
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-147-0035

Sole Source Delegation by Type

The Chief Procurement Officer of the DAS State Procurement Office grants approval and authority including Contract Administration to ODOT's Designated Procurement Officer to process Sole Source Procurements up to the \$150,000.00 threshold. Above the intermediate threshold, ODOT must seek written approval from the DAS State Procurement Office.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.075
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-147-0040

Special Delegated Procurements

(1) Terms used in division 147 rules and ORS 279B.400 have the same meaning as defined in ORS 279B.085.

(2) Authorization. The Chief Procurement Officer of the DAS State Procurement Office grants approval and authority per OAR 125-246-0140, and 125-247-0288 to the ODOT Designated Procurement Officer for these Special Procurements:

(a) Brand Names or Products, "or Equal," Single Seller and Sole Source;

- (b) Equipment Repair and Overhead;
- (c) Purchases of Used Personal Property; and
- (d) Reverse Auctions.

(3) The following apply to Brand Names or Products, "or Equal," Single Seller and Sole Source procurements:

(a) "Procurement of Brand Name 'or Equal' Products" means the Procurement of a product after specifying the registered Brand name of the product or requiring the same Specifications of the Brand Name product.

(b) Specifications. Solicitation Specifications for Public Contracts must not expressly or implicitly require any product of any particular manufacturer or seller except:

(A) "Or Equal" Specification. ODOT may specify a particular brand name, make or product suffixed by "or equal," "or approved equal," "or equivalent," "or approved equivalent," or similar language if there is no other practical method of Specification; and

(B) Specifying a Particular Make or Product. ODOT may specify a brand name, make, or product without an "or equal" or equivalent suffix if there is no other practical method of Specification, after documenting the Procurement File with the following:

(i) A brief description of the Solicitation(s) to be covered including volume of contemplated future purchases;

(ii) The brand name, mark, or product to be specified; and

(iii) The reason ODOT is seeking this procurement method, which must include at least one of the following findings in the Procurement File:

(I) It is unlikely that Specification of the brand name, mark or product will encourage favoritism in the award of the Public Contracts or substantially diminish competition;

(II) Specification of the brand name, mark or product would result in substantial cost savings to ODOT; or

(III) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

(c) Public Notice. ODOT must make a reasonable effort to notify all known suppliers of the specified product and invite such suppliers to submit competitive bids or proposals; or must document the Procurement File with findings of current market research to support the determination that the product is available from only one seller. Posting a notice on ORPIN for a reasonable time period satisfies this Requirement.

(d) Purchasing From Sole Source, Single Seller. ODOT may purchase a particular product or service (also known as Goods or Services) available from only one source if ODOT meets the Requirements of section (b)(A) and (B) of this rule and a Sole-Source Procurement pursuant to ORS 279B.075. ODOT, prior to purchase, must document the Procurement File with ODOT's findings of current market research to support the determination that the product or service is available from only one seller or source. ODOT's findings must also include:

(A) A brief description of the Contract or Contracts to be covered including volume of contemplated future purchases;

(B) Description of the Goods or Services to be purchased; and

(C) The reason ODOT is seeking this procurement method, which must include at least one of the following:

(i) Efficient utilization of existing Goods or Services requires the acquisition of compatible Goods or Services;

(ii) The required product is data processing equipment which will be used for research where there are requirements for exchange of software and data with other research establishments; or

(iii) The particular product is for use in a pilot or an experimental project.

(e) Single Manufacturer, Multiple Sellers. ODOT may specify a product or service available from only one manufacturer, but available through multiple sellers, if ODOT meets the Requirements of paragraphs (b)(A) and (B) of this section and the following:

(A) If the total purchase is \$5,000 or more but does not exceed \$150,000 and a comparable product or service is not available under an existing Mandatory Use Contract, competitive quotes must be obtained and retained in the Procurement File for Intermediate Procurements; or

(B) If the purchase exceeds \$150,000, and the comparable product or service is not available under an existing Mandatory Use Contract, ODOT must follow the solicitation process for formal.

(f) Single Manufacturer, Multiple Purchases. If ODOT intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed five (5) years, ODOT must so state in the Procurement file, the Solicitation Document, if any, and the public notice described in paragraph (b)(B) of this section. Such documentation and public notice constitute sufficient notice as to subsequent purchases. If the total purchase amount is estimated to exceed \$150,000, this must be stated in the advertisement for Bids or Proposals.

(g) If ODOT competitively solicits, it must comply with the rules for that method of Solicitation pursuant to ORS 279B.055 through 279B.075.

(h) Nothing in this rule exempts ODOT from obtaining the approval of the Attorney General for legal sufficiency pursuant to ORS 291.047.

(i) ODOT must comply with ORS 200.035, notwithstanding this rule.

(4) The following apply to Equipment Repair and Overhaul procurements:

(a) Conditions. ODOT may enter into a Public Contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(A) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(B) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

(b) Process and Criteria. ODOT must use competitive methods wherever possible to achieve best value and must document in the Procurement File the reasons why a competitive process was deemed impractical. If the anticipated purchase exceeds \$5,000, ODOT must post notice on ORPIN. The resulting Contract must be in Writing and ODOT's Procurement File must document the use of this Special Procurement rule by number to identify the sourcing method. Nothing in this rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(5) The following apply to Purchase of Used Personal Property procurements:

(a) Authorization. Subject to the provisions of this rule, ODOT may purchase used property or equipment without competitive bidding and without obtaining competitive quotes, if, at the time of purchase, ODOT has determined and documented that the purchase will:

(A) Be unlikely to encourage favoritism or diminish competition; and

(B) Result in substantial cost savings or promote the public interest.

(b) "Used personal property or equipment" means the property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of ODOT's purchase. "Used personal property or equipment" generally does not include property or equipment if ODOT was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(c) Process and Criteria:

(A) For purchases of used personal property or equipment costing not exceeding \$150,000, ODOT must, where feasible, obtain three competitive Quotes, unless ODOT has determined and documented that a purchase without obtaining competitive Quotes will result in cost savings and will not diminish competition or encourage favoritism.

(B) For purchases of used personal property or equipment exceeding \$150,000, ODOT must use competitive methods wherever possible to

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achieve best value and must document in the Procurement File the reasons why a competitive process was deemed impractical. If the anticipated purchase exceeds \$5,000, ODOT must post notice on ORPIN. The resulting Contract must be in Writing and ODOT's Procurement File must document the use of this Special Procurement rule by number to identify the sourcing method. Nothing in this rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(6) The following apply to Reverse Auction procurements:

(a) Process. A Reverse Auction means a process for the purchase of Goods or Services by a buyer from the lowest Bidder. ODOT as the buyer must conduct Reverse Auctions by first publishing a Solicitation that describes its requirements, Contract terms and conditions. Then, ODOT must solicit online Bids from all interested Bidders through an Internet-based program. The Solicitation must set forth a start and end time for Bids and specify the following type of information to be disclosed to Bidders during the Reverse Auction:

(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");

(C) The scores of the Bidders if ODOT chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of paragraphs (A), (B) and (C) of this subsection.

(b) Before the Reverse Auction commences, Bidders must be required by ODOT to assent to the Contract terms and conditions, either in Writing or by an Internet "click" agreement. The Bidders then compete for the award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by ODOT. The identity of the Bidders must not be revealed during this process. Only the successively lower price(s), ranks, scores and related details, separately or in any combination thereof, will be revealed to the participants. ODOT may cancel this Solicitation if it determines that it is in ODOT's or the State's best interest. At the end of this Bidding process, ODOT must award any potential Contract to the lowest Responsible Bidder or in the case of multiple awards, lowest Responsible Bidders pursuant to ORS 279A.055(10)(b). This process allows ODOT to test and determine the suitability of the Goods or Services before making the Award. ODOT must comply with the following public notice procedures for this type of Solicitation:

(A) ODOT must disclose the Reverse Auction process in the Solicitation Documents.

(B) ODOT must provide initial notice of this Solicitation through ORPIN.

(C) ODOT must give subsequent notices of the price(s) offered, rank(s), score(s) and related details to the initial Bidders, as described in the Solicitation Document.

(D) ODOT must issue a Notice of Intent to award at least seven (7) calendar days prior to making the Award.

(c) Prequalification. For each Solicitation, on a case-by-case basis, ODOT may determine whether prequalification of suppliers is needed. If prequalification is used, ODOT must pre-qualify suppliers and provide an appeal process in accordance with ORS 279B.120 and related rules.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.085

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-147-0050

Mandatory Use Contracts and Price Agreements

(1) Mandatory Use Contracts, for the purposes of this rule and including DAS and ODOT Price Agreements, service agreements, and sales agreements, may be established for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, combining requirements for volume discounts, standardization among Agencies, and reducing lead-time for ordering. A Mandatory Use Contract requires ODOT to purchase Goods or Services for an anticipated need at a predetermined price, provided the Mandatory Use Contract is let by a competitive Procurement Process pursuant to the requirements of ORS 279A, 279B, and 279C.

(2) ODOT may purchase the Goods or Services from a Contractor awarded a Mandatory Use Contract without first undertaking additional competitive Solicitation.

(3) ODOT must use Mandatory Use Contracts established by DAS or ODOT unless otherwise specified in the Contract, allowed by law or these rules.

(4) Notwithstanding section (3) of this rule, ODOT is exempted from Mandatory Use Contracts for acquisition of the following, regardless of dollar amount:

(a) Goods or Services from another Government Public Agency, provided that a formal, Written agreement is entered into between the parties;

(b) Goods or Services from the federal government, pursuant to ORS 279A.180;

(c) Personal property for resale through student stores operated by public educational Contracting Agencies; and

(d) Emergency purchases declared by a Contracting Agency pursuant to ORS 279B.080.

(5) The term of the Contract, including renewals, must not exceed the maximum term stated in the original Solicitation.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.090

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-147-0060

Amendments for Intermediate Goods or Services Procurements

ODOT may amend a Public Contract awarded as an intermediate Procurement in accordance with OAR 137-047-0800, but the cumulative amendments shall not increase the total Contract Price to a sum that is greater than twenty-five percent (25%) of the original Contract price, except:

(1) ODOT may amend a Public Contract awarded as an intermediate Procurement in accordance with OAR 137-047-0800 over the twenty-five percent (25%) cumulative amount but not exceeding the \$150,000 threshold with written approval from the ODOT Designated Procurement Officer based upon a determination of the best interests of the State.

(2) ODOT may amend a Public Contract awarded as an intermediate Procurement in accordance with OAR 137-047-0800 over the twenty-five percent (25%) cumulative amount exceeding the \$150,000 threshold with written approval from the ODOT Designated Procurement Officer and Department of Justice based upon a determination of the best interests of the State.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-148-0010

Application

The Oregon Department of Transportation adopts OAR 137-048-0100 through 137-048-0320 (effective March 1, 2005), the Department of Justice Model Rules, Consultant Selection: Architectural, Engineering, Land Surveying, and Related Services Contracts including the additional provisions provided in these rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-148-0020

Price Agreement Selection Process

(1) Consultants for Price Agreements must be selected, and the Oregon Department of Transportation (ODOT) must obtain Architectural, Engineering and Land Surveying and Related Services by selecting a Consultant or Consultants in the following manner. When ODOT selects more than one Consultant under the Price Agreement Solicitation process under 137-048-0130(1), ODOT must identify objective criteria in the Solicitation Document and the Price Agreement to be used in assigning particular Architectural, Engineering and Land Surveying and or Related Services to the most qualified consultant.

(2) Design-Build Contracts involve the provision of both design and construction services for Public Improvements under one Contract. Under most circumstances, Design-Build Contracts are Mixed Contracts with the predominate purpose of the Contract involving construction of the Public Improvement. If the predominate purpose of the Contract is to obtain Architectural, Engineering and Land Surveying and Related Services, selection may proceed under these Division 148 rules and shall not be considered a Design-Build project.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279C.110, 279C.115

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

731-149-0010

Application

The Oregon Department of Transportation adopts OAR 137-049-0100 through 137-049-0910 (effective March 1, 2005), the Department of Justice Model Rules, General Provisions Related to Public Contracts for Construction Services. The adoption of the Department of Justice Model

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Rules by this rule does not apply to any contracts that are subject to OAR chapter 731, division 5 or division 7.

Stat. Auth: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05

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

Adm. Order No.: DMV 4-2005(Temp)
Filed with Sec. of State: 2-16-2005
Certified to be Effective: 2-17-05 thru 8-15-05
Notice Publication Date:

Rules Amended: 735-070-0185
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 current rule is too restrictive because it does not allow DMV to accept a document that contains the required information, either because the information is not on Copy 2 of the CCF or it is unclear whether DMV has received Copy 2. For example, on facsimiles the portion that appears on the bottom border of the form showing it is Copy 2 is often cut off or illegible. In other cases the Medical Review Officer is sending the information on something other than Copy 2. DMV is unable to post a valid positive drug test result on a commercial driver's employment driving record when this occurs, which is contrary to the statutory intent of ORS 825.412.

The proposed amendments to OAR 735-070-0185 specify that either a completed Copy 2 of the CCF or any other document that contains the specific information required in federal regulations must be included as a report of a positive drug test. This will authorize DMV to post all valid positive drug test results on employment driving records as required under ORS 825.412.

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 after December 31, 2004.

Stat. Auth: ORS 184.616, 184.619, 802.010
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

Adm. Order No.: DMV 5-2005
Filed with Sec. of State: 2-16-2005
Certified to be Effective: 2-16-05

Notice Publication Date: 1-1-05

Rules Amended: 735-010-0030

Subject: As one of its services, DMV provides an automatic reporting service to Record Inquiry Account holders who qualify. An account holder who subscribes to the service provides DMV with a list of individuals and DMV will automatically send the account holder a certified driving record when certain convictions, accidents, suspensions, revocations or cancellations are posted to the individual's driving record. The account holder must pay a \$3 fee for each record sent by DMV and a \$2 fee each time DMV adds or deletes an individual from the reporting service list. An online service option now allows account holders to modify their reporting service list online. DMV has amended OAR 735-010-0030(1)(n) to delete the \$2 fee if the account holder adds or deletes an individual from the reporting service list using DMV's online option and to change the name of the service to the Automated Reporting Service (A.R.S.). OAR 735-010-0030(1)(i)(A) is also amended to include a reference to records requested through the A.R.S.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-010-0030

Types of Driver Records Available and Their Fees

(1) The types of driver records available and the fees for these records are:

(a) Abstract of Employment Driving Record — A computer-produced certified record that has certain entries of a person's employment driving record required by ORS 802.200 and 802.220. These entries include employment-related accidents, suspensions and convictions for violation of motor vehicle laws, as set forth in ORS 802.200(10). The record includes entries for the last three years immediately preceding the request. Miscellaneous administrative entries also may be included as determined by the department. Convictions for offenses resulting in mandatory revocation or suspension under ORS 803.410 and 813.400 are excluded from this record as required by ORS 802.200:

(A) The fee for a certified employment driving record ordered by mail or through DMV's Automated Voice Exchange (D.A.V.E.) is \$2;

(B) Employment driving records provided on magnetic tape are \$2 for each record and will not be certified; and

(C) There is a \$1.50 search fee if the employment driving record ordered cannot be found in the department's computer file.

(b) Abstract of Nonemployment Driving Record — A computer-produced certified record containing certain entries of a person's nonemployment driving record required or allowed by ORS 802.200 and 802.220. These entries include motor vehicle accidents, suspensions, revocations, or cancellations of driving privileges, convictions for violation of motor vehicle laws, other than those included in the employment driving record and DUII diversion agreements. For convictions for violation of the basic rule, the rural interstate maximum speed limit, the federal maximum speed limit and the truck/passenger transport vehicle speed limit, occurring after September 27, 1987, the record includes the speed at which the person was traveling and the designated or posted speed. The record includes entries of accidents, convictions and DUII diversion agreements for the three years immediately preceding the request, but does not include suspensions terminated by notice under ORS 803.220. Miscellaneous administrative entries also may be included as determined by the department:

(A) The fee for a certified nonemployment driving record ordered by mail or through D.A.V.E. is \$1.50;

(B) The fee for a nonemployment record provided on magnetic tape is \$1.50 for each record and will not be certified; and

(C) There is a \$1.50 search fee if the nonemployment driving record ordered cannot be found in the department's computer file.

(c) Insurance Abstract of Nonemployment Driving Record — A computer-produced certified record containing certain entries of a person's nonemployment driving record as described in subsection (b) of this section, but not limited to three years. This record is available only to an insurer, insurance support organization, or the person to whom the record pertains, who requests the record for the purpose of providing or obtaining an insurance discount under ORS 746.265(3):

(A) The fee for a certified insurance abstract of nonemployment driving record ordered by mail is \$1.50;

(B) The fee for an insurance abstract of nonemployment driving record provided on magnetic tape is \$1.50 for each record and will not be certified; and

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(C) There is a \$1.50 search fee if the insurance abstract of nonemployment driving record ordered cannot be found in the department's computer file.

(d) Driver License Information — Includes driver's name, address, license number, license type, license expiration date, license restrictions, license issue date, original business date, status of license, and (if applicable) ID card expiration date. Driver license information may be provided orally or by computer-produced certified print:

(A) Driver license information on a person's own record or information on another person's record will be provided by computer-produced certified print or provided orally by an operator to an account user, for a fee of \$1.50. There is a \$1.50 search fee if the driver license information cannot be found in the department's computer file; and

(B) The fee for driver license information provided orally by D.A.V.E. is \$1.20. When D.A.V.E. is used and the driver information cannot be found in the department's computer file, a \$1.20 search fee will be charged.

(e) Oregon Police Traffic Crash Report — A copy of the Oregon Police Traffic Crash Report, Form 735-46, that has been filed with DMV. The fee for an Oregon Police Traffic Crash Report, if not certified is \$8.50, \$9.50 if certified. Bulk requests for all copies of Oregon Police Traffic Crash Reports filed with DMV on a specific day are \$.50 per report, plus postage, and are not available in certified form;

(f) Driver License/ID Card Application History — Copies of all original, renewal and duplicate applications for a driver license and/or ID card contained in the department's records. The fee for a driver license/ID card application history if not certified is \$17.50, \$18.50 if certified;

(g) Miscellaneous Driver Document Copy — Copies of any document or transaction dealing with a person's driving record, driver license, or driving privilege. The fee for a miscellaneous driver document copy if not certified is \$4, \$5 if certified;

(h) Driver File History — A computer-produced print containing all entries shown on the computer file for a driver, except those entries exempted under ORS 192.501 and 192.502 (e.g., medical information). The fee for a driver file history is \$2. There is a \$1.50 search fee if the driver's file cannot be found in the department's computer file;

(i) Certified Court Print — A computer-produced driving record of a person including convictions for major traffic offenses, DUII diversion agreements and any alcohol rehabilitation entries for the last ten years; and convictions for minor traffic offenses and motor vehicle accidents for the last five years. Suspensions, cancellations and revocations are also included, along with miscellaneous administrative entries:

(A) The fee for a certified court print ordered by mail, through D.A.V.E. or through A.R.S. is \$3;

(B) Court prints provided on magnetic tape are \$3 for each record and will not be certified; and

(C) There is a \$1.50 search fee if the driving record ordered cannot be found in the department's computer file.

(j) Suspension Package — Includes a certified court print and certified copies of any of the following documents needed for a particular court proceeding: suspension, revocation or cancellation order; returned envelopes, signed receipts, or affidavits showing whether the person received notice of the suspension, revocation or cancellation; hardship permit applications; license restrictions, or any letter sent to the person by first class mail informing the person of a suspension, revocation or cancellation. The fee for a suspension package is \$11.50. There is a \$1.50 search fee if the driving record ordered cannot be found in the department's computer file;

(k) Driver Records List — A records list of drivers' names, addresses and other record information meeting some specific criteria set by the requester, such as a list of all names and addresses of drivers of a specific age group. Records lists are available upon request if available selection criteria are used. The requester shall describe how the records list will be used. If the purpose of the records list is for bulk distribution as defined in OAR 735-010-0008, the records list shall only include individuals who have requested their names and addresses be provided on such lists. The driver records list is furnished on paper or on magnetic tape provided by the requester. The fee for a driver records list using available criteria is \$700. If the records list is furnished on paper, no more than 50,000 records shall be provided. Records lists that require additional programming will not be provided unless other DMV priority demands on available data processing resources have been met. The fee for a driver records list that requires additional programming will be determined by the actual cost to produce the list using the criteria set forth in OAR 735-010-0000;

(l) Driving Record — Purged Information — Copies of microfiche containing entries of a person's driving record purged from the depart-

ment's computer file. The fee for a driver record-purged information if not certified is \$1.50, and \$2.50 if certified;

(m) Insurance Information Search — A search of the records to identify the insurance company and policy number for a vehicle or individual. This information may be provided orally or by letter. The fee for an insurance information search is \$10; and

(n) Automated Reporting Service (A.R.S.) — Involves adding or deleting an individual from the Automated Reporting Service. When a person requests an individual be added to the A.R.S., a certified court print is automatically sent to the requester when certain convictions for violation of motor vehicle laws, accidents, suspensions, revocations or cancellations are posted to that individual's driving record. The requester must have a current Record Inquiry Account with DMV before he or she can use the A.R.S. The requester must pay a fee of \$2 for each individual DMV adds to or deletes from the A.R.S. There is no fee if the requester uses DMV's online A.R.S. option to add or delete an individual. The requester must pay the fee set forth in paragraph (1)(i)(A) of this rule for each certified court print sent by DMV.

(2) Persons who want to look at a record using a video terminal at a DMV office shall pay the same fee charged for the record look-ups, unless otherwise specified by rule. The person must qualify to obtain personal information from motor vehicle records and must make an appointment with the DMV Records Services Unit at 1905 Lana Avenue, N.E., Salem, Oregon 97314 to view a record.

(3) Personal information shall not be included in any driver record requested unless the requester qualifies to receive such information under ORS 802.175 to 802.191 and OAR 735-010-0200 to 735-010-0230.

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.179, 802.183, 802.220, 802.230
Stats. Implemented: ORS 746.265 & 802.220
Hist.: MV 10-1984, f. 6-29-84, ef. 7-1-84; MV 8-1985, f. & ef. 8-1-85; MV 20-1987, f. 9-21-87, ef. 10-1-87; Administrative Renumbering 3-1988, Renumbered from 735-032-0035; MV 44-1989, f. & cert. ef. 10-16-89; MV 15-1990, f. 8-30-90, cert. ef. 9-1-90; MV 12-1992, f. & cert. ef. 10-16-92; DMV 16-1998, f. 12-17-98, cert. ef. 1-1-99; DMV 20-2001, f. & cert. ef. 10-18-01; DMV 1-2002, f. & cert. ef. 1-17-02; DMV 5-2005, f. & cert. ef. 2-16-05

Adm. Order No.: DMV 6-2005

Filed with Sec. of State: 2-16-2005

Certified to be Effective: 2-16-05

Notice Publication Date: 12-1-04

Rules Adopted: 735-022-0120

Rules Repealed: 735-168-0070

Subject: ORS 803.035 authorizes DMV to adopt rules for the optional titling of vehicles that are not subject to vehicle titling requirements under ORS 803.025 or that are exempt from vehicle titling requirements by ORS 803.030. The optional title rule is being adopted for the following reasons: (1) Many vehicles currently exempt from Oregon title requirements have dramatically increased in sales volume and purchase price. Consequently, many vehicle consumers are now financing the purchase of their vehicles through banks, credit unions and other lending institutions. (2) The adoption of this rule will authorize eligible out-of-state residents to obtain Oregon titles to vehicles eligible for title under this rule, if the issuance of an Oregon title does not violate the laws of the jurisdiction in which the person resides. (3) To protect the financial and ownership interests of vehicle owners, lending institutions and vehicle dealers. OAR 735-168-0070 is repealed because the requirements for the optional titling of Class I and III ATVs have been added to the new rule.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-022-0120

Optional Titling

(1) The purpose of this rule is to explain:

(a) When DMV may optionally title a vehicle that is exempt from titling requirements under ORS 803.030;

(b) The effect of title, and the requirements for a vehicle and the owner of a vehicle optionally titled under section (2) of this rule; and

(c) The specific vehicle categories and types that are not eligible to be optionally titled.

(2) When Issued. Except as specified in section (4) of this rule, DMV may issue an Oregon title for a vehicle exempt from titling requirements under ORS 803.030(1) and (2) if the vehicle owner(s):

(a) Requests a vehicle title be issued by submitting an application for Oregon title that meets the requirements of ORS 803.050; and

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(b) Meets the qualifications for issuance of title under ORS 803.045, including but not limited to payment of required fees and submission of evidence of ownership as described in OAR 735-022-0000.

(3) Effect of Title. Upon issuance of an Oregon title under section (2) of this rule:

(a) The vehicle is not authorized to operate on Oregon highways unless the vehicle is lawfully registered in the state or jurisdiction where the owner is domiciled or is a resident, or the vehicle is otherwise exempt from registration requirements under ORS 803.305;

(b) The owner must comply with all applicable state and federal laws, rules and regulations related to the titling of vehicles; and

(c) The vehicle shall remain titled in Oregon and is subject to all the provisions of the vehicle code applicable to vehicles titled by this state until the vehicle is legally titled under the laws of another jurisdiction or an Oregon salvage title is issued.

(4) Vehicles not Eligible for Title. Notwithstanding section (2) of this rule, the following vehicles may not be issued an Oregon title under any circumstances:

(a) A bicycle as defined in ORS 801.150;

(b) A converter dolly as defined in ORS 801.217;

(c) An electric assisted bicycle as defined in ORS 801.258;

(d) An electric personal assistive mobility device as defined in ORS 801.259;

(e) An emergency fire apparatus providing public fire protection;

(f) A golf cart, unless it is defined as a low-speed vehicle under ORS 801.295;

(g) An implement of husbandry as defined in ORS 801.310;

(h) Vehicles moved exclusively on stationary rail tracks as described in ORS 801.026

(i) Vehicles powered exclusively by human power as described in ORS 801.026;

(j) The following vehicles as listed in ORS 803.030

(A) A farm tractor;

(B) A farm trailer when the operation or movement of the vehicle upon the highways is incidental to its use in an agricultural operation;

(C) A fixed load vehicle while operated within an immediate construction project, as described in a governmental agency contract, or used in the construction or reconstruction of state or county roads, highways or city streets;

(D) A motor vehicle designed to operate at a loaded weight over 8,000 pounds, a trailer and equipment while owned, leased, contracted or requisitioned by the State Forester, State Board of Forestry, their contractors under ORS chapter 477, or the federal government; or for the purposes of forest protection and fire suppression under ORS chapter 477 or a similar federal statute, including movement of the vehicles to and from the work area;

(E) A road roller;

(F) A traction engine;

(G) A trolley;

(H) A United States Government owned and operated motor vehicle or trailer; and

(I) Well drilling machinery;

(k) An invalid chair, including a motorized wheelchair as described in ORS 814.500;

(l) A motor assisted scooter as defined in ORS 801.348; and

(m) A tow dolly as defined in ORS 801.529.

(5) Notwithstanding section (1) of this rule, DMV may refuse to issue an Oregon title if:

(a) A vehicle is not manufactured primarily for operation on a highway;

(b) A vehicle is not manufactured in accordance with state and federal safety and equipment laws, regulations or standards for motor vehicles; or

(c) Issuance of an Oregon title violates the law of another jurisdiction.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.030 & 803.035

Stats. Implemented: 803.010, 803.030, 803.035, 803.040, 803.045 & 803.092

Hist.: DMV 6-2005, f. & cert. ef. 2-16-05

Adm. Order No.: DMV 7-2005

Filed with Sec. of State: 2-16-2005

Certified to be Effective: 2-16-05

Notice Publication Date: 1-1-05

Rules Amended: 735-034-0010, 735-150-0080

Subject: At the request of the Oregon Dealer Advisory Committee (ODAC), DMV has amended OAR 735-150-0080 (Requirements for Issuing Trip Permits). The amendment extends from five (5) to seven

(7) the number of days from the date of issuance of a trip permit that a dealer or trip permit agent must mail or deliver a copy of the trip permit to DMV. The change will make reporting trip permit sales more efficient for dealers because the seven-day period is the same as the filing period for the Dealer Notice of Vehicle Purchase, Form 735-165 required to be filed by dealers with DMV upon the transfer, purchase or sale of a vehicle. This will allow both notices to be filed at the same time, and is intended to save the dealers time and effort. For consistency, OAR 735-034-0010(2)(f)(A) and (3)(a) are also being amended to change the submission period for trip permits from five (5) to seven (7) days from the date a permit is issued or is voided. A non-substantive grammatical change was also made.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-034-0010

Procedures for Issuance of Trip Permits

(1) This rule describes the procedures and requirements for vehicle trip permits issued under the authority of ORS 803.600. Vehicle trip permits may be issued by:

(a) A trip permit agent pursuant to ORS 803.600 and OAR 735-034-0005;

(b) A vehicle dealer pursuant to ORS 802.031 and OAR 753-150-0040, including a vehicle dealer who issues 10-day trip permits as described under ORS 803.600; or

(c) A towing business that issues 10-day trip permits as described under ORS 803.600.

(2) A person described under section (1) of this rule must comply with the following requirements:

(a) Unless otherwise authorized in writing by DMV, trip permits must be purchased from DMV in advance.

(b) Each trip permit issued must be legibly completed with the following information:

(A) The name and address of the vehicle's registered owner or the person applying for the trip permit. The name and address is recorded on the issuer's copy and DMV's copy of the permit;

(B) The driver license number of the vehicle's registered owner or the person applying for the trip permit, if available. Nothing may be written on the purchaser's (window) copy of the permit to identify the person to whom the permit was issued;

(C) A complete vehicle description, including the year, make, body style and vehicle identification number (VIN);

(D) The written signature of the person who issues the permit. This must include at least the person's full first and last name;

(E) The identification number of the trip permit agent, if one has been assigned by DMV, or the certificate number of the dealer or towing business;

(F) The effective date and expiration date of the permit;

(G) For a registration weight trip permit, the registration weight of the vehicle.

(c) For a light vehicle trip permit, the person who issues the permit must require the applicant to sign a certification stating:

(A) The insurance company name and policy number; and

(B) The motor vehicle is covered by an insurance policy that meets the requirements of ORS 806.080 and will continue to be covered as long as the permit is valid.

(d) A vehicle dealer or towing business that issues a 10-day trip permit:

(A) Must ensure the Oregon registration stickers have been removed in accordance with 803.565;

(B) May not issue more than two permits for the same motor vehicle; and

(C) Must require the person applying for the permit to provide the insurance company name and policy number on the permit, and sign the certificate on the permit stating that the motor vehicle is covered by an insurance policy that meets the requirements of ORS 806.080 and will continue to be covered as long as the permit is valid.

(e) For a recreational vehicle trip permit, the person who issues the permit must require the applicant to:

(A) Provide proof of ownership as described in OAR 735-034-0050;

(B) Sign a certification stating that the applicant has not been issued recreational vehicle trip permits that when included with the permit being applied for, would grant more than 10 days vehicle operation for the preceding 12 months;

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(C) Provide the insurance company name and policy number if the trip permit is for a motor home; and

(D) Sign the certificate on the permit, stating that the recreational vehicle is covered by an insurance policy that meets the requirements of ORS 806.080 and will continue to be covered as long as the permit is valid if the trip permit is for a motor home.

(f) A person authorized to issue a trip permit under section (1) of this rule:

(A) Must send DMV's copy of the permit to DMV within seven (7) days of the date a permit is issued; and

(B) May not loan, transfer or assign a trip permit to any other person.

(3) Any alteration of the permit information will automatically void the permit:

(a) When a trip permit is voided, the trip permit agent, vehicle dealer, or towing business must return the vehicle (purchaser's) copy and DMV's copy to DMV within seven (7) days of the date it was voided, along with an explanation of why the permit was voided. If either copy of the voided permit is unavailable for submission to DMV, the explanation must state the reason; and

(b) If DMV is satisfied that a prepaid permit was not used for the operation of a vehicle, DMV will refund the prepaid permit fee to the trip permit agent, vehicle dealer or towing business that purchased the permits from DMV.

(4) Upon receipt of a written request from a trip permit agent, vehicle dealer or towing business subject to this rule, DMV will refund the fee amount for each unissued prepaid permit.

(5) Upon DMV's written request, a trip permit agent, vehicle dealer or towing business subject to this rule must immediately cease issuing permits and immediately return all unused trip permits to DMV. DMV will issue a refund to the trip permit agent, vehicle dealer or towing business for any unused prepaid permits returned to DMV.

(6) DMV may revoke the authority of a trip permit agent, vehicle dealer or towing business to issue trip permits for failure to comply with the provisions of this rule, or at any time DMV determines it is no longer in the interest and convenience of the motoring public or a change in state or federal law or regulation prohibit the designation.

(7) The failure of a trip permit agent, vehicle dealer or towing business to comply with the provisions of this rule may result in the revocation of the authority to issue trip permits.

Stat. Auth.: ORS 184.616, ORS 184.619, 803.600 – 803.650 & 806.080

Stats. Implemented: ORS 803.565, 803.600, 803.602 & 803.645

Hist.: MV 19-1986, f. & cert. ef. 12-1-86; Administrative Renumbering 3-1988, Renumbered from 735-110-0060; MV 2-1989, f. & cert. ef. 1-3-89; MV 13-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 9-1998, f. & cert. ef. 8-20-98; DMV 14-2001, f. & cert. ef. 8-13-01; DMV 28-2001(Temp), f. 12-14-01 cert. ef. 1-1-02 thru 6-29-02; DMV 8-2002, f. & cert. ef. 4-12-02; DMV 28-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 9-2004, f. & cert. ef. 5-24-04; DMV 7-2005, f. & cert. ef. 2-16-05

735-150-0080

Requirements for Issuing Trip Permits

Designated dealers must comply with the following requirements when issuing trip permits:

(1) Each copy of the trip permit must be completed with the following information:

(a) Name, address, driver license number and state of issue of the person issued the permit. A recreational vehicle trip permit must only be issued to the owner of the vehicle listed on the permit. This information may not be displayed on the (window) copy of the permit;

(b) If the applicant does not have a driver license or if the permit is issued to a business, nothing will be displayed on the purchaser's (window) copy of the permit to identify to whom the permit was issued. The name and address information is recorded on all other copies of the permit;

(c) A complete vehicle description, including year, make, body style and identification number;

(d) A written signature, including the full first and last name of the employee who issued the permit;

(e) Dealer certificate number;

(f) The effective date and expiration date of the permit; and

(g) The applicant's signature certifying:

(A) The insurance company name and policy number for the motor vehicle;

(B) The motor vehicle is covered by an insurance policy that meets the requirements of ORS 806.080 and will continue to be covered as long as the permit is valid;

(C) For a recreational vehicle trip permit, that the applicant has not been issued recreational vehicle trip permits that when included with the

permit being applied for, would grant more than 10 days vehicle operation for the preceding 12 months.

(2) Except as specified in section (3) of this rule, DMV's copy of the trip permit must be mailed or delivered to DMV within seven (7) days of the date the permit was issued.

(3) Alteration of the effective date, ownership information or vehicle description will automatically void a trip permit. When a trip permit is voided for any reason, the purchaser's (window) copy and DMV's copy of the permit and a written explanation about why the permit was voided must be mailed or delivered to DMV on the date the permit is voided. A refund of the prepaid permit fee will be made if DMV is satisfied that the permit was properly voided and not used for operation of the vehicle. If either copy of the permit is unavailable for submitting to DMV, the explanation must state why the copy is unavailable.

(4) The remaining (issuer's) copy of the trip permit must be retained by the dealer.

(5) Trip permits (or books of permits) may not be loaned to another dealer or individual or issued for vehicles sold by another dealer or individual.

(6) Unused trip permits may be returned to DMV for a refund of fees paid.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 803.600

Stats. Implemented: ORS 803.600 – 803.650

Hist.: MV 20-1986, f. & cert. ef. 12-1-86; Administrative Renumbering 3-1988, Renumbered from 735-071-0215; MV 2-1989, f. & cert. ef. 1-3-89; MV 13-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 10-1998, f. & cert. ef. 8-20-98; DMV 28-2001(Temp), f. 12-14-01 cert. ef. 1-1-02 thru 6-29-02; DMV 8-2002, f. & cert. ef. 4-12-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 7-2005, f. & cert. ef. 2-16-05

Adm. Order No.: DMV 8-2005

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Rules Amended: 735-062-0020, 735-062-0030

Rules Repealed: 735-062-0020(T), 735-062-0030(T)

Subject: OAR 735-062-0020 outlines acceptable proof of an applicant's age and identity when applying to DMV for an original, renewal or replacement driver permit, driver license or identification card. On January 1, 2004, DMV tightened the proof of age and identity requirements for national security purposes and to address the growing problem of identity theft and fraud by amending OAR 735-062-0020. DMV has determined that it is necessary to amend OAR 735-062-0020 to add more identity verification methods for persons applying for renewals and replacements, to clarify the type of documentation necessary when the person's name has changed, and to add more documents to the list of acceptable primary and secondary documents. DMV has determined these rule changes will assist DMV in the verification of age and identity when issuing a driver license, driver permit or identification card. The amendments to OAR 735-062-0030 are needed to correctly reflect references to the amended OAR 735-062-0020. These rules replace temporary rules effective October 1, 2004.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-062-0020

Proof of Age and Identity Requirements

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will require all applicants for driver permits, driver licenses, and identification cards to present to DMV documentary proof of the applicant's age and identity prior to the issuance of such driver permit, driver license, or identification card.

(2) Applicants for original driver permits, driver licenses, and identification cards must present:

(a) Two of the primary proofs of age and identity listed in section (10) of this rule; or

(b) One of the primary proofs of age and identity listed in section (10) of this rule that contains a date of birth and at least two of the secondary proofs of age and identity listed in section (11) of this rule.

(3) Applicants for renewal of driver permits, driver licenses and identification cards must present:

(a) Two of the primary proofs of age and identity listed in section (10) of this rule;

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(b) One of the primary proofs of age and identity listed in section (10) of this rule that contains a date of birth and at least two of the secondary proofs of age and identity listed in section (11) of this rule;

(c) The renewal reminder notice mailed by DMV as required by ORS 807.140 and their current driver permit, driver license or identification card; or

(d) Two of the supplemental proofs of age and identity listed in section (12) of this rule, if:

(A) The applicant can correctly answer one or more questions about the applicant's motor vehicle record; and

(B) DMV verifies the applicant's identity through the duplicate photograph retained by DMV under ORS 807.115.

(4) Applicants for replacement driver permits, driver licenses and identification cards must comply with ORS 807.162 and also present:

(a) Two of the primary proofs of age and identity listed in section (10) of this rule;

(b) One of the primary proofs of age and identity listed in section (10) of this rule that contains a date of birth and at least two of the secondary proofs of age and identity listed in section (11) of this rule; or

(c) Two of the supplemental proofs of age and identity listed in section (12) of this rule if:

(A) The applicant can correctly answer one or more questions about the applicant's motor vehicle record; and

(B) DMV verifies the applicant's identity through the duplicate photograph retained by DMV under ORS 807.115.

(5) Documents must be original or certified copies.

(6) Foreign birth certificates, passports and driver licenses will not be accepted as primary proof of age and identity unless they are either in English or contain an English translation within the same document. No separate translation document(s) will be accepted.

(7) Documents must be of different types and no two documents can be issued by the same government agency, department or consulate. For example, a U.S. birth certificate issued by a state agency and a social security card issued by the Social Security Administration are acceptable. A passport and a consulate card issued by the same consulate will not be accepted.

EXCEPTION: The Oregon digital photo on file and an Oregon driver permit, driver license or identification card will serve as two separate primary documents. For example, a person who has a valid Oregon driver permit and applies for an Oregon driver license could present the valid driver permit and the photo on file as sufficient proof of age and identity.

(8) Except as otherwise provided in this rule, DMV will accept the document up to one year after the expiration date shown on the document.

(9) For an original driver license, driver permit or identification card, if the applicant's true name has changed, at least one of the required proofs of age and identity must show the person's current true name. If a transaction includes a name change required under ORS 807.560 or 807.400, one of the required proofs of age and identity must show the applicant's name as shown in the applicant's DMV driving record, and one of the required proofs of age and identity must show the person's new true name.

(10) Primary proofs of age and identity include:

(a) A U.S., Canadian or U.S. Territorial government issued birth certificate. For purposes of this subsection, DMV will not accept a hospital issued birth certificate, hospital card, birth registration or baptismal certificate.

(b) A U.S. Consular Report of Birth Abroad (FS-240).

(c) A Certification of Birth (DS-1350 or FS-545).

(d) U.S. Military documents including:

(A) Military or Armed Forces ID card;

(B) Military Common Access Card;

(C) U.S. Uniform Services ID and Privileges card (DD1173 and DD1173-1); and

(D) Request for Verification of Birth (DD372).

(e) Passport, accepted if not expired longer than five year from the expiration date.

(f) U.S. immigration or naturalization documents including:

(A) U.S. Citizen ID card (I-179 and I-197);

(B) Resident Alien card or Permanent Resident card (I-551);

(C) Temporary Resident ID card (I-688);

(D) Employment Authorization Document (I-688A, I-688B and I-766);

(E) Certificate of Citizenship (N560 and N561); or

(F) Certificate of Naturalization (N550, N570 and N578).

(g) Out-of-state, District of Columbia, U.S. Territorial government or Canadian driver license, instruction permit or identification card, that has the applicant's photo, unless hole-punched or marked as "Not Valid As ID", accepted if not expired longer than one year from the expiration date.

(h) Oregon driver license, instruction permit, or identification card that has the applicant's photo, accepted if not expired longer than five years from the expiration date.

(i) The applicant's duplicate photograph retained by DMV under ORS 807.115.

(j) Non-immigrant visa issued by the U.S. Department of State.

(k) U.S. Department of State driver license or Non-driver ID card.

(l) An Oregon Concealed Weapon Permit/Concealed Handgun License.

(m) A Confederated Tribes of Oregon Tribal ID card if:

(A) DMV determines the procedures used in issuing the card are reasonably equivalent to DMV standards for verification of a person's age and identity; and

(B) The card contains sufficient security features to alleviate alteration or counterfeiting of the card.

(n) Social Security card.

(o) A Consulate ID card if:

(A) DMV determines the procedures used in issuing the card are reasonably equivalent to DMV standards for verification of a person's age and identity; and

(B) The card contains sufficient security features to alleviate alteration or counterfeiting of the card.

(p) A letter verifying identity provided by an Oregon correction agency if:

(A) DMV determines the procedures used in issuing the letter are reasonably equivalent to DMV standards for verification of a person's age and identity; and

(B) The letter contains sufficient security features to alleviate alteration or counterfeiting of the letter.

(q) A letter verifying identity provided by the U.S. Pretrial Services if:

(A) DMV determines the procedures used in issuing the letter are reasonably equivalent to DMV standards for verification of a person's age and identity; and

(B) The letter contains sufficient security features to alleviate alteration or counterfeiting of the letter.

(r) A letter verifying identity provided by the Oregon Youth Authority Age if:

(A) DMV determines the procedures used in issuing the letter are reasonably equivalent to DMV standards for verification of a person's age and identity; and

(B) The letter contains sufficient security features to alleviate alteration or counterfeiting of the letter.

(s) Any other document DMV determines is acceptable.

(11) Secondary proofs of age and identity include:

(a) U.S. military discharge papers.

(b) An Oregon student body identification card, issued for the current school year or not more than one year old.

(c) An Oregon Job Corps identification card, issued for the current school year or not more than one year old.

(d) A W-2 or 1099 tax form for the current tax year.

(e) Medicare card.

(f) A court document issued by a court in the United States that shows the applicant is a party to the judicial proceeding and which contains court signatures and seals. Acceptable documents are:

(A) Gender and/or name change;

(B) Adoption, guardianship, custody or child support; and

(C) Record of Marriage issued by Oregon Vital Records.

(g) A Permit to Reenter the U.S. (I-327).

(h) Border Crossing cards (DSP-150, I-185, I-186 and I-586).

(i) A Refugee Travel Document (I-571).

(j) A birth certificate, driver license, military ID card, passport or voter card issued by a foreign government. A DMV employee may accept a foreign document that does not include English if the employee is able to understand the information in the document that relates to the person's identity and is satisfied the document was validly issued.

(k) Social Security Card transmittal document (stub).

(l) A benefits letter issued by the Social Security Administration, if dated within the last year.

(m) Veterans' Universal Access Identification Card.

(n) Any other document DMV determines is acceptable.

(12) Supplemental proofs of age and identity include:

(a) Any document on the secondary document list in section (11) of this rule.

(b) Vehicle title or registration document.

(c) Bound checkbook.

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- (d) Bank or credit card.
- (e) Marriage license or divorce decree.
- (f) A court document issued by a United States Bankruptcy court that shows the applicant is a party to a bankruptcy proceeding.
- (g) Medical benefits card.
- (h) Law enforcement identification card.
- (i) Expired out-of-state driver license, instruction permit, or identification card, accepted if not expired longer than five years from the expiration date and not hole-punched or marked as "Not Valid As ID".
- (j) Laminated Social Security Card.
- (k) A letter issued by the Oregon Health Plan, if dated within the last year.
- (l) Merchant Marine identification card.
- (m) Checking or savings account statement, if dated within the last year.
- (n) Birth registration card or credit card style birth certificate.
- (o) Commercial Driver License medical card.
- (p) Certified copy of school transcript.
- (q) Oregon liquor control service or food handler permit.
- (r) Pilot's license.
- (s) U.S. Tribal identification card.
- (t) Oregon voter registration card.
- (u) Oregon professional license or identification card.
- (v) Any other document DMV determines is acceptable.

(13) DMV will not accept a document as proof of identity or age if DMV has reason to believe the document is not valid. DMV may request an applicant for a driver permit, driver license, or identification card to present additional documentary proof of age or identity if the documents presented do not establish the applicant's age or identity to the satisfaction of DMV.

Stat. Auth.: ORS 184.616, 184.619, 807.050, 807.150 & 807.400
Stats. Implemented: ORS 807.050, 807.062, 807.150, 807.160, 807.220, 807.230 & 807.280
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; March 1988, Renumbered from 735-031-0016; MV 6-1990, f. & cert. ef. 4-2-90; DMV 12-1997, f. & cert. ef. 11-17-97; DMV 7-2001, f. & cert. ef. 3-7-01; DMV 34-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 5-2004, f. & cert. ef. 3-25-04; DMV 21-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; DMV 8-2005, f. & cert. ef. 2-16-05

735-062-0030

Proof of Residence Address

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) requires all applicants for an original driver permit, driver license, or identification card to present to DMV at least one document showing the applicant's name and current residence address. Current residence address is the address where the applicant actually lives, and DMV will include this address on the permit, license, or identification card. Acceptable documents include any of the items listed in section (3) of this rule.

(2) DMV requires all applicants who apply for a renewal or duplicate driver permit, driver license, or identification card at a DMV field office to present to DMV at least one document showing the applicant's current residence address if the applicant is changing his or her address. Acceptable documents include any of the items listed in section (3) of this rule.

(3) Proof of residence address includes any of the following documents that show the applicant's current residence address:

- (a) Any one of the proofs of identity listed in OAR 735-062-0020(10) or (11).
- (b) Mortgage documents.
- (c) A statement from the parent, step-parent, or guardian of an applicant attesting to the applicant's residence address. The parent, step-parent or guardian must reside at the same address as the applicant and sign a statement attesting to the applicant's residence address. In addition, the parent, step-parent, or guardian must present one acceptable proof of address document as set forth in this rule that shows the current residence address of the applicant.
- (d) A statement of the applicant's spouse. The spouse must reside at the same residence as applicant and sign a statement attesting to the applicant's residence address. In addition, the spouse must present one other acceptable proof of address document as set forth in this rule that shows the current residence address of the applicant.
- (e) Rental or lease agreement signed by the landlord and applicant and dated within one year of the application for the license, permit or identification card.

- (f) Utility hook-up order.
- (g) Payment booklet.

(h) Mail that is dated within 60 days of the application for the license, permit or identification card. DMV will accept mail from the following sources:

- (A) Credit card companies;
 - (B) U.S. Treasury;
 - (C) Social Security Administration;
 - (D) State or Federal Revenue Department;
 - (E) Government agencies;
 - (F) Utility companies;
 - (G) Financial institutions;
 - (H) Insurance companies; and
 - (I) Originators of out-of-state clearance letter.
- (i) Oregon vehicle title or registration documents.
- (j) Oregon voter registration card.
- (k) Selective Service card.
- (l) Medical or health card.
- (m) Educational institution transcript forms for the current school year.

(n) An unexpired professional license issued by an agency in the United States.

(4) If the applicant does not have a residence address, DMV may accept a descriptive address with a mailing address. DMV may require the applicant to provide proof that no residence address has been assigned to the property. Such proof may include, but is not limited to, a statement from the U.S. Postal Service or from the Assessor's office in the county in which the property is located.

(5) An applicant who is homeless may use a descriptive address of the location where he/she actually resides, e.g., "under the west end of Burnside Bridge." The applicant must prove that he or she is a resident or domiciled in Oregon pursuant to OAR 735-016-0040. In addition to the descriptive address, the applicant also must provide a mailing address.

(6) An applicant who travels continuously may use a descriptive address of "continuous traveler". The applicant must prove that he or she is a resident or domiciled in Oregon pursuant to OAR 735-016-0040. In addition to the descriptive address, the applicant also must provide a mailing address.

Stat. Auth.: ORS 184.616, 184.619, 807.050, 807.150 & 807.400
Stats. Implemented: ORS 807.110, 807.160, 807.400
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; March 1988, Renumbered from 735-031-0017; DMV 2-1995, f. & cert. ef. 2-10-95; DMV 12-1997, f. & cert. ef. 11-17-97; DMV 34-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 5-2004, f. & cert. ef. 3-25-04; DMV 21-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; DMV 8-2005, f. & cert. ef. 2-16-05

Adm. Order No.: DMV 9-2005

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Rules Amended: 735-118-0000, 735-118-0010, 735-118-0030

Subject: These rules outline the requirements for ignition interlock devices (IID) and the manufacturers of those devices. The amendments add a separate definition in OAR 735-118-0000 for a manufacturer and a provider. Amendments to OAR 735-118-0010 clarify that it is the manufacturer that must certify that the IID that they manufacture meets the requirements of ORS 813.600(2) and OAR 735-118-0040 and that DMV will publish a list of the devices that meet the requirements and of the providers of those devices. The amendments to OAR 735-118-0030 remove sections (2) and (3) regarding notification and review rights. DMV is merely publishing a list of approved devices. Manufacturers are not entitled to an administrative review upon removal of its devices from DMV's list. Publishing a list of approved devices does not create rights for the manufacturer that would entitle it to a hearing or any administrative process. Sections (4) and (5) are being removed as DMV has no authority to require that the costs of removal and installation of new devices be placed on the manufacturer if that manufacturer's devices no longer meet the qualifications to be on the list of approved devices.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-118-0000

Definitions Relevant to Ignition Interlock Devices

For purposes of OAR 735-118-0000 through 735-118-0040, the following definitions will apply:

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(1) "Alcohol" means the generic class of organic compounds known as alcohols and, specifically, the chemical compound ethyl alcohol. For the purpose of ignition interlock devices, there is no requirement expressed or implied that the device be manufactured specifically to detect ethyl alcohol.

(2) "Alveolar Air" also called "Deep Lung Air" means the air sample which is the last portion of a prolonged, uninterrupted exhalation and which gives a quantitative measurement of alcohol concentration from which blood alcohol concentration can be determined. The alveoli are the smallest air passages in the lungs, surrounded by capillary blood vessels and through which an interchange of gasses occurs during respiration. Alcohol in the blood is eliminated from the lungs via the alveoli.

(3) "Blood Alcohol Concentration (BAC)" means the weight (w) amount of alcohol contained in a unit volume (v) of blood, measured in grams Ethanol/100ml blood and expressed as %, grams %, % w/v and % BAC. Blood alcohol concentration in these rules will be designated a "% BAC."

(4) "Bogus" means air samples that are not human breath samples and may include but are not limited to compressed air, hot air dryers, balloons filled with air (human breath or other air sources), manual air pumps.

(5) "Court" means a court that has made the use of an ignition interlock device a mandatory part of a particular individual's sentencing for a conviction of driving under the influence of intoxicants.

(6) "Customer" means anyone, including, but not limited to, a person, company, agency or organization that purchases, rents, or leases, etc., an ignition interlock device from a manufacturer.

(7) "Device" means an ignition interlock device.

(8) "DMV" means the Driver and Motor Vehicle Services Division of the Department of Transportation.

(9) "Ignition Interlock Device" means an instrument designed to measure the BAC of an individual and which prevents a motorized vehicle from starting when the BAC exceeds a predetermined and preset level.

(10) "Interlock" means the state in which a device prevents a motor vehicle from starting.

(11) "Manufacturer" means a person, company, or corporation, who manufactures or produces an ignition interlock device.

(12) "Provider" means a person, company, corporation or representative who provides, installs, sells, rents or leases an ignition interlock device.

(13) "Purge" means any mechanism by which a device cleanses or removes a previous breath test sample from the device and specifically removes residual alcohol.

(14) "Restart" means the ability to start the engine again without giving another test. A "restart" occurs after a test is successfully completed, the vehicle is started, and then, at some point, the engine stops for any reason (including stalling) and must be restarted.

Stat. Auth.: ORS 184.616, 184.619 & 813.600

Stats. Implemented: ORS 813.600

Hist.: MV 36-1987(Temp), f. & ef. 12-1-87; Administrative Renumbering 3-1988, Renumbered from 735-169-0000; MV 17-1988, f. & cert. ef. 5-18-88; DMV 11-2001, f. & cert. ef. 7-18-01; DMV 9-2005, f. & cert. ef. 2-16-05

735-118-0010

Ignition Interlock Devices Approved in Oregon and Providers

(1) Ignition interlock devices acceptable for use in Oregon must be:

(a) Devices certified by the manufacturer to meet the requirements of ORS 813.600(2) and OAR 735-118-0040; and

(b) Devices for which the manufacturer meets product liability requirements of OAR 735-118-0020.

(2) DMV will publish a list of the devices that meet the requirements of section (1) of this rule and of the providers of those devices.

[ED. NOTE: Lists referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619 & 813.600

Stats. Implemented: ORS 813.600

Hist.: MV 36-1987(Temp), f. & ef. 12-1-87; Administrative Renumbering 3-1988, Renumbered from 735-169-0010; MV 17-1988, f. & cert. ef. 5-18-88; DMV 11-2001, f. & cert. ef. 7-18-01; DMV 9-2005, f. & cert. ef. 2-16-05

735-118-0030

Removal from List of Approved Ignition Interlock Devices

(1) DMV may remove a device from the list of approved devices, upon any of the following grounds:

(a) Evidence of repeated device failures due to gross defects in design, materials or workmanship during manufacture;

(b) Notices of cancellation of the manufacturer's liability insurance;

(c) Notification that the manufacturer or provider is no longer in business;

(d) Voluntary request from the manufacturer to remove a device from the approved list; or

(e) Any other reasonable cause to believe the device was inaccurately represented to meet the performance standards.

(2) When a device is removed from the list of approved devices that device will no longer be acceptable for new installations. However, DMV will allow those individuals who currently have that device installed in a vehicle to continue with that device until the end of the requirement for an IID.

Stat. Auth.: ORS 184.616, 184.619 & 813.600

Stats. Implemented: ORS 813.600

Hist.: MV 36-1987(Temp), f. & ef. 12-1-87; Administrative Renumbering 3-1988, Renumbered from 735-169-0030; MV 17-1988, f. & cert. ef. 5-18-88; DMV 11-2001, f. & cert. ef. 7-18-01; DMV 9-2005, f. & cert. ef. 2-16-05

Department of Transportation, Highway Division Chapter 734

Adm. Order No.: HWD 1-2005

Filed with Sec. of State: 2-16-2005

Certified to be Effective: 3-1-05

Notice Publication Date: 12-1-04

Rules Adopted: 734-010-0200, 734-010-0210, 734-010-0220, 734-010-0230, 734-010-0240, 734-010-0250, 734-010-0260, 734-010-0270, 734-010-0280, 734-010-0290, 734-010-0300, 734-010-0310, 734-010-0320, 734-010-0330, 734-010-0340, 734-010-0350, 734-010-0360, 734-010-0370, 734-010-0380

Rules Repealed: 734-010-0010, 734-010-0020, 734-010-0030, 734-010-0040, 734-010-0050, 734-010-0060, 734-010-0070, 734-010-0080, 734-010-0090, 734-010-0100, 734-010-0110, 734-010-0120, 734-010-0130, 734-010-0140, 734-010-0150, 734-010-0160, 734-010-0170

Subject: During the last legislative session, ORS 279, the chapter that governs construction contracts, was revised and reorganized into three chapters - ORS 279A, ORS 279B and ORS 279C by HB 2341 (chapter 794, Oregon Laws 2003). As a result, all administrative rules adopted under authority of ORS 279 will be repealed on March 1, 2005. The text of ODOT's existing administrative rules in Chapter 734, Division 10, with minor changes to align language with the new statutes, is being adopted as new rules, as required by chapter 794, Oregon Laws 2003.

Rules Coordinator: Brenda Trump—(503) 945-5278

734-010-0200

Repealed Rules

As required by OR Laws 2003, Chapter 794, Section 334, OAR 731-010-0010 through 731-010-0170 are repealed effective March 1, 2005. The repealed rules will continue to apply to the solicitation of Public Contracts first advertised, but if not advertised then entered into, before March 1, 2005.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.300, sec. 334 & 336, ch. 794, OL 2003

Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0210

Effective Date

OAR 734-010-0200 through 734-010-0380 become effective on March 1, 2005 and apply to Public Contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.300, sec. 334 & 336, ch. 794, OL 2003

Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0220

Definitions

The following definitions apply to terms used in Division 10 rules:

(1) "AM" means Area Manager or the equivalent position.

(2) "Applicant" means any individual or legal entity submitting a Contractor's Prequalification Application to ODOT.

(3) "Authorized contractor representative" means the person authorized by the contractor to sign the prime contractor performance evaluation.

(4) "Bidder" means any individual or legal entity submitting a proposal to an advertisement for a contract.

(5) "Bid opening" means the day on which the bids for a highway project will be opened and read.

(6) "CCM" means ODOT's Construction Contracts Manager.

(7) "Commission" means the Oregon Transportation Commission.

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(8) "Contract" means public improvement contracts, as defined in ORS 279A.010(1)(bb), awarded by the Oregon Department of Transportation under authority of ORS 279A.050 and 366.205.

(9) "Contractor" means the individual or legal entity that has entered into a contract with ODOT.

(10) "DAS" means Oregon Department of Administrative Services.

(11) "Date of Second Notification" means the date on which required construction work, including change order work and extra work, has been satisfactorily completed, except for minor corrective work, and the recording of daily time charges cease.

(12) "Disqualification" means an action taken by ODOT to prohibit an applicant from becoming prequalified or from bidding on ODOT contracts.

(13) "Deputy Director" means ODOT's Deputy Director for Highways or authorized representative.

(14) "Engineer" means ODOT's Chief Engineer or authorized representative.

(15) "Deputy Director's or Engineer's final decision" means the decision of ODOT's Deputy Director for Highways or Chief Engineer acting through authorized representatives.

(16) "Notice to Contractors" means the public announcement inviting bids for work to be performed or materials to be furnished.

(17) "Notice to Proceed" means written notice from ODOT authorizing the contractor to begin the work.

(18) "ODOT" means the Oregon Department of Transportation.

(19) "PM" means the Project Manager representing ODOT on the project, including, but not limited to, an ODOT employee, local government representative, or consultant employed by ODOT or a local government. The PM is the Deputy Director's or Engineer's representative who directly manages and/or performs the engineering and administration of a contract.

(20) "Revocation" means an action taken by ODOT terminating a contractor's prequalification and ability to bid on ODOT contracts.

(21) "SCME" means ODOT's State Construction and Materials Engineer.

(22) "Suspension" means action taken by ODOT to temporarily suspend a contractor's prequalification for a specified period of time.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430

Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0230

Prequalification for Bidding

(1) Pursuant to ORS 279C.430(1), the Commission requires that all bidders be prequalified within the appropriate class(es) of work contained in the current Contractor's Prequalification Application adopted by DAS and used by ODOT.

(2) Special contractor prequalifications may be required in addition to the mandatory prequalification in subsection (1) when the elements of a particular public improvement project require specialized knowledge and/or expertise. When special prequalification is required, the Request for Special Contractor Prequalification will be advertised in the Daily Journal of Commerce.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430

Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0240

Conditions of Prequalification

(1) Applicants must be prequalified in the class(es) of work designated in the special provisions for the specific project in which the applicant desires to bid on ODOT contracts.

(2) Prequalification applications must be received at ODOT's address shown in the prequalification application at least 10 calendar days before the bid opening in which the applicant wishes to participate.

(3) If an applicant fails to complete the application as required or fails to submit the filing fee, ODOT will return the material submitted. Any changes or additional information required by ODOT must be submitted and signed by the same person that signed the original application. The changes and additional information must be attested to by a sworn affidavit. The applicant may send a new application that includes the changes or additional information required by ODOT.

(4) The date on which all required information has been received by ODOT's Construction Contracts Unit will be considered the receipt date of the prequalification application.

(5) Each member of a Joint Venture must be prequalified, with at least one of the Joint Venture members prequalified in each of the project's des-

ignated class(es) of work as defined in section (1) of this rule. A Joint Venture may be required to submit a joint venture agreement prior to award of the contract.

(6) Subcontractors are not required to be prequalified.

(7) All applicants desiring to prequalify shall:

(a) Complete and submit the Contractor's Prequalification Application, in accordance with the directions contained therein, setting forth their qualifications to satisfactorily carry out the work to be performed. The prequalification application is available on the Construction Contracting website at <http://www.odot.state.or.us/techserv/progrsv/contract/prequalification/application.htm> or from the Construction Contracts Unit of ODOT, 455 Airport Road SE, Building K, Salem, Oregon 97301-5348; and

(b) Submit a filing fee of \$100. In accordance with ORS 200.055(7), ODOT may collect a filing fee from applicants to cover the costs of the Department of Consumer and Business Services in administering ORS 200.005 to 200.075 and ORS 279A.105. The \$100 fee must be submitted with the completed prequalification application to ODOT's address shown in the prequalification application.

(8) ODOT shall notify an applicant of acceptance or denial of prequalification within 30 days after receiving applicant's complete prequalification application and filing fee.

(9) Prequalification is valid from March 1 of the current calendar year, or date of prequalification approval, if later, through the last day of February of the following calendar year. Applicants must renew their prequalifications with the \$100 filing fee annually.

(10) Applicants shall update their prequalification application with ODOT when information changes. Any change to an applicant's prequalification application must be received at ODOT's address shown in the prequalification application at least 10 days prior to bid opening if that information affects the bid submitted. Any changes requested by the applicant must be submitted and signed by the same person that signed the original application or by a person holding the same position as the person that signed the original application. The changes must be attested to by sworn affidavit. There is no charge to update an existing prequalification for minor changes such as changing an address, company name, or adding or deleting class(es) of work. Major changes must be submitted by a new prequalification application.

(11) Sections (2) through (10) of this rule also apply to applicants who use ODOT's prequalification system to prequalify for local agency projects.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430

Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0250

Effect of Prequalification on Bidding

(1) Applicants shall be considered prequalified upon receipt of written notification from ODOT.

(2) Bidders will be considered non-responsive and bids will be rejected under any of the following conditions:

(a) The bidder's prequalification application is not received at ODOT's address shown in the prequalification application at least 10 days prior to bid opening;

(b) The bidder is not prequalified in the class(es) of work designated in the special provisions; or

(c) The bidder's prequalification is not approved by ODOT.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430

Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0260

Waiving Prequalification Requirements

Prequalification requirements for contracts may be waived by the Deputy Director or Chief Engineer under the following circumstances:

(1) In the case of an emergency;

(2) If finding that special circumstances exist so that prequalification is not necessary; or

(3) For contracts under \$50,000.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430

Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0270

Disqualification, Revocation or Suspension

(1) Applicants must sign a sworn affidavit that the information they provide in the prequalification application is true. Any applicant for prequalification who willfully makes, or causes to be made, any false, decep-

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tive or fraudulent statements in any questionnaire or statement required to be submitted under this rule, shall be denied prequalification or the applicant's current prequalification shall be revoked.

(2) If ODOT disqualifies an applicant or revokes a prequalification, the applicant or prospective bidder shall receive a written notice identifying the reasons for the disqualification or revocation as found in ORS 279C.440.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0280

Appeals Covering Prequalification Application

(1) If ODOT denies an applicant's prequalification or revokes an existing prequalification, the applicant may appeal the denial or revocation by requesting a hearing with DAS in accordance with ORS 279C.445 and 279C.450. If the applicant wishes to appeal disqualification to DAS, the applicant must, within three business days after receipt of notice of disqualification, notify the CCM in writing.

(2) Upon receipt of such notice of appeal, the CCM will immediately notify the Director of DAS.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0290

Contractor Performance Evaluations

(1) This rule applies to contractors who must be prequalified to bid on ODOT contracts.

(2) Contractors who enter into contracts with ODOT after this administrative rule becomes effective, shall have their performance evaluated on each contract. The evaluation will be scored on the basis of a percentage score.

(3) The PM shall complete the evaluation using the current version of ODOT Form 734-2469A, Prime Contractor Performance Evaluation.

(4) The performance criteria being evaluated include supervision, progress schedule, quality of materials and workmanship, payment, affirmative action, safety, traffic control, compliance with regulations, and major breaches.

(5) The evaluation shall be conducted as follows:

(a) If the duration of a contract is 12 months or less, the PM shall complete one evaluation within 60 days of date of Second Notification for the contract; or

(b) If the duration of a contract is over 12 months, the PM shall complete an evaluation at the anniversary date of the Notice to Proceed. In addition to annual evaluations, the PM shall complete an evaluation within 60 days of the date of Second Notification for the contract.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0300

Scoring Contractor Performance Evaluation

(1) Each evaluation will result in a percentage score, which is calculated by dividing the total score assigned by the total possible score times 100.

(2) After the percentage score has been calculated, the PM shall review the evaluation with an authorized contractor representative.

(3) Both the PM and authorized contractor representative shall sign and date the evaluation form. The signed and dated evaluation form will be forwarded to the SCME. The PM shall give a signed copy to the authorized contractor representative and shall transmit a copy by facsimile within 24 hours to the contractor's home office and to the appropriate AM. Overnight mail service shall be used if facsimile is not available.

(a) If an authorized contractor representative is unavailable or refuses to sign the evaluation form, the PM will sign and date the evaluation, and shall transmit a copy by facsimile to the contractor's address of record shown in the contract.

(b) If the contractor does not request review of the percentage score within 10 calendar days of receipt of the evaluation, pursuant to OAR 734-010-0370, the score is final.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0310

12-Month Rolling Average Score

(1) The individual contract percentage scores from evaluations for the preceding 12 months will be averaged for each contractor on a monthly

basis to develop a rolling average. The rolling average score will be the average of all individual percentage scores received within the previous 11 months plus the current month. Contract evaluation scores that are more than 12 months old will not be included in the rolling average score.

(2) The rolling average score received will determine what corrective action ODOT shall take with a contractor whose performance falls within or below certain percentage ranges.

(3) This rule does not preclude ODOT from taking immediate and appropriate corrective action with contractors for serious breaches, as allowed for by the contract, by other rules, or by Oregon Revised Statutes.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0320

Scoring Ranges and Corrective Actions

(1) The scoring ranges and corrective actions are as follows, unless otherwise specified in section (2) or (3) of this rule. When a corrective action plan is required, see OAR 734-010-0330 for further information. Score — Action:

(a) 100–80 — No Action Required.

(b) $<80 \geq 70$ — A mandatory meeting with the SCME is required. A corrective action plan that is acceptable to ODOT is required.

(c) $<70 \geq 60$ — A mandatory three-month suspension of the Contractor's prequalification shall be imposed. A mandatory meeting with the SCME is required. A corrective action plan that is acceptable to ODOT is required.

(d) <60 — A mandatory six-month suspension of the Contractor's prequalification shall be imposed. A mandatory meeting with the SCME is required. A corrective action plan that is acceptable to ODOT is required.

(2) Second Suspension. If a contractor receives a second suspension of its prequalification under this rule within a five-year period, the suspension period shall be double that of the first suspension period specified in section (1) of this rule, as follows:

(a) $<70 \geq 60$ — A mandatory six-month suspension of the contractor's prequalification shall be imposed. A mandatory meeting with the SCME is required. A corrective action plan that is acceptable to ODOT is required.

(b) <60 — A mandatory 12-month suspension of the contractor's prequalification shall be imposed. A mandatory meeting with the SCME is required. A corrective action plan that is acceptable to ODOT is required.

(3) Three or More Suspensions. If a contractor receives three or more suspensions of its prequalification under this rule within a five-year period, the suspension periods will be quadruple that of the initial suspension periods specified in section (1) of this rule, as follows:

(a) $<70 \geq 60$ — A mandatory 12-month suspension of the contractor's prequalification shall be imposed. A mandatory meeting with the SCME is required. A corrective action plan that is acceptable to ODOT is required.

(b) <60 — A mandatory 24-month suspension of the contractor's prequalification shall be imposed. A mandatory meeting with the SCME is required. A corrective action plan that is acceptable to ODOT is required.

(4) The following apply to future rolling averages:

(a) After any suspension, the percentage scores received prior to the beginning of the suspension will not be used in future rolling averages;

(b) If a project is more than 75% complete in dollars of the original contract amount at the beginning of the suspension, then its percentage score will not be part of the subsequent rolling average score; and

(c) If a project is 75% or less complete in dollars of the original contract amount at the beginning of the suspension period, an evaluation of only the work completed after the start of suspension will be used in the subsequent rolling average score.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0330

Corrective Action Plan

The purpose of the corrective action plan and the meeting with the SCME is to help the contractor improve processes and avoid low ratings in the future.

(1) If a contractor's rolling average score is $<80 \geq 70$, the contractor shall meet with and present a written corrective action plan to the SCME within 21 days after receiving notice that the contractor has received a score in the $<80 \geq 70$ range. The contractor will be allowed to bid during the 21 days and receive award for any proposal submitted during this period. After the 21 days, if a corrective action plan has not been presented to and approved by the SCME, the contractor will not be allowed to bid or receive

ADMINISTRATIVE RULES

award again until the corrective action plan has been submitted and approved by the SCME.

(2) If the rolling average score falls below 70 and the contractor's prequalification is suspended, a written corrective action plan must be submitted and approved by the SCME at least 30 days prior to the end of the suspension. If the corrective action plan is not submitted and approved by the SCME at least 30 days prior the end of suspension, the contractor will serve an additional 30 day suspension from the time the corrective action plan is approved by the SCME.

(3) When the SCME has approved the corrective action plan, the SCME shall notify the contractor and the CCM via facsimile (or mail if facsimile is not available). The SCME will also notify the CCM if the contractor does not have an approved corrective action plan as required under sections (1) and (2) of this rule.

(4) The CCM will notify the contractor via facsimile (or mail when facsimile is not available) once the contractor is eligible to bid again.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0340

Notification of Suspension from Bidding

(1) The SCME will notify ODOT's CCM when a contractor's score falls below 80.

(2) The CCM will notify the contractor via facsimile that its score has fallen below an acceptable level and that its prequalification has been suspended.

(3) The contractor may appeal a suspension through DAS by requesting a DAS appeal within three days of receipt of the suspension notice, as specified in OAR 734-010-0380.

(4) In all cases, any notification of suspension and reinstatement shall be made in writing and sent to the contractor by the CCM. The SCME will also be notified.

(5) The effective date of a suspension will be:

(a) Ten days after the date of the Deputy Director's or Engineer's final decision; or

(b) Ten days after the date any appeal becomes final.
Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0350

Suspension Record Retention

For purposes of use in these prequalification rules, contractor records of suspension shall be maintained for a five-year period from the date of suspension. A record of a contractor's suspension that is older than five years may not be used in calculating further suspensions.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0360

Effect of Suspension on Business

(1) Any disqualification, suspension or revocation from bidding or of a prequalification shall be binding upon the following:

(a) Any contractor so disqualified, suspended or revoked;

(b) Any business with which such contractor's owners, officers, directors or managing agents are associated;

(c) Any subsidiaries, affiliates, parent corporations, joint ventures, successors, assigns of the contractor; and

(d) Any entity in which the contractor, its owners, officers, directors and managing agents are owners, majority shareholders or such persons own in the aggregate a majority of shares, partners, directors, officers or agents, other than in a capacity solely as an employee of that other entity or business.

(2) Such disqualifications, suspensions or revocations of these other entities and businesses shall apply continuously during the contractor's period of disqualification, suspension or revocation.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0370

ODOT's Review Process on Individual Contractor Performance Evaluation

(1) If a contractor disagrees with the PM's evaluation rating on a contract, the contractor shall meet with the PM to try to resolve differences. The request for a meeting must be made within 10 calendar days after

receiving the evaluation rating. If the request is not made within 10 calendar days, the percentage score shall be considered the final score.

(2) The PM shall meet with the contractor to try to resolve differences within 10 calendar days after receiving the request. After this meeting is held, the PM shall notify the contractor within 10 calendar days of PM's final decision via facsimile (or overnight mail if facsimile is not available), and a copy shall be sent to the AM.

(3) If the contractor does not agree with the PM's findings, the authorized contractor representative may request a meeting of review with the AM. The request for a meeting shall be made in writing and sent to the PM. The written request must be received by the PM within 10 calendar days from the date that the contractor received the PM's final decision.

(4) If the authorized contractor representative does not request a meeting with the AM within 10 calendar days from the date of receipt of the PM's final decision, the percentage score shall be considered the final score.

(5) The AM shall notify the contractor of the review meeting date within 10 calendar days of receipt of contractor's request.

(6) The AM's decision shall be made within 10 calendar days of the meeting. The findings of the AM shall be the Deputy Director's or Engineer's final decision. The AM shall notify the contractor of the decision via facsimile (or overnight mail if facsimile is not available). A copy of the written decision shall be sent to the SCME.

(7) In all cases, when calculating calendar days, the first day will begin:

(a) On the date facsimiles are sent by ODOT; or

(b) The day following overnight mail.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

734-010-0380

DAS Appeal Process Covering Contractor Evaluations

(1) In the event that a contractor's prequalification is suspended or revoked by ODOT, the contractor may appeal the suspension or revocation to DAS in accordance with ORS 279C.445 and ORS 279C.450. If the contractor wishes to appeal disqualification as a bidder to DAS, the contractor must, within three business days after receipt of notice of disqualification, notify the CCM in writing.

(2) Upon receipt of such notice of appeal, the CCM will immediately notify the Director of DAS and the SCME.

(3) The Director of DAS will notify the appealing party and ODOT of the time and date of the hearing. The hearings appeal and final decision will take place in accordance with the statutory requirements and applicable DAS rules.

(4) If the suspension is upheld, the CCM will notify the contractor and the SCME when the suspension of the contractor's prequalification will begin.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05

Health Licensing Office
Chapter 331

Adm. Order No.: HLO 1-2005

Filed with Sec. of State: 2-28-2005

Certified to be Effective: 3-1-05

Notice Publication Date: 12-1-04

Rules Amended: 331-710-0010, 331-715-0010, 331-720-0010

Subject: The current rules do not address a mechanism for renewal/reinstatement of a license if a licensee fails to obtain the required continuing education hours every two years as a condition of licensure, or lets the license remain in an expired status beyond two years. The rule revision is necessary to prevent individual's employment and/or licensing status being adversely affected as licensure is required for practicing respiratory care in Oregon. The proposed rule provides an alternative to meeting continuing education requirements while still ensuring continued competency of professionals working as respiratory care therapists in Oregon. It also removes artificial barriers to individuals licensed as respiratory therapists in another state in active practice a means to qualify for Oregon licensure. Individuals may provide proof of licensure and active practice in another

ADMINISTRATIVE RULES

state, or evidence of completion of the national examination within one year preceding date of application for renewal/reinstatement.

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

331-710-0010

Application Requirements

(1) Individuals applying for licensure to practice respiratory care must meet the requirements of OAR 331-030-0000 in addition to the provisions of this rule.

(2) Applicants must submit an application form prescribed by the Agency, which shall contain the information listed in OAR 331-030-0000, payment of the application and license fees, and one of the following criteria:

(a) **NATIONAL CREDENTIAL:** Official documentation of a passing score, successfully completed within one year preceding the date of application, of the Certified Respiratory Therapist (CRT) examination or Registered Respiratory Therapist (RRT) examination mailed by the National Board for Respiratory Care to the agency. Copies of examination results or other documentation provided by the applicant are not acceptable. The applicant is responsible for payment of fees assessed by NBRC in obtaining required official documentation.

(b) **OUT OF STATE LICENSURE:** Official documentation in the form of an *Affidavit of Licensure*, submitted directly to the agency from the originating state's regulatory office, evidencing that the applicant currently holds a respiratory therapist license and that the licensee has not been subject to disciplinary action involving suspension or revocation, and no action or civil penalties are currently pending against the licensee. The Affidavit must indicate whether the applicant satisfactorily passed the NBRC examination or a state prepared examination that has been approved by the Board as being equivalent to the national examination.

Stat. Auth.: ORS 676.605, 676.615, 688.815 & 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.815 & 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 10-2004(Temp), f. & cert. ef. 11-8-04 thru 3-31-05; HLO 1-2005, f. 2-28-05 cert. ef. 3-1-05

331-715-0010

License Renewal

(1) A license renewal application received by the agency or post-marked after a license has expired but within one year from the expiration date, may be approved upon payment of the renewal and delinquency fees and required verification of continuing education pursuant to OAR 331-720-0010.

(2) A license which has been expired for more than one year, but less than two years may be renewed upon payment of the license renewal and restoration fees and submission of required continuing education documentation pursuant to OAR 331-720-0010.

(3) A license which has been expired two or more years may be reinstated by payment of application and renewal fees, and submission of continuing education documentation pursuant to OAR 331-720-0010 or proof of NBRC retake of entry level examination completed within one year prior to the date of reapplication.

(4) Failure to meet continuing education requirements of OAR 331-720-0010, will require reapplication and qualification for licensure according to the provisions of OAR 331-710-0010(2)(a) or (b).

Stat. Auth.: ORS 676.605, 676.615 & 688.830

Stats. Implemented: ORS 676.605, 676.615 & 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 1-1998(Temp), f. & cert. ef. 3-20-98 thru 4-1-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 10-2004(Temp), f. & cert. ef. 11-8-04 thru 3-31-05; HLO 1-2005, f. 2-28-05 cert. ef. 3-1-05

331-720-0010

Continuing Education Requirements

(1) Each respiratory care practitioner is required to complete 15 hours of Board approved continuing education every two years, whether the license is active or inactive. At least two-thirds of the required continuing education hours shall be related to clinical practice of respiratory care.

(2) To renew the license, evidence of required continuing education shall be provided at the time of renewal by means of a prescribed self-attestation statement certifying participation in approved continuing education. To ensure that adequate proof of attainment of required continuing education is available for audit or investigation by the Health Licensing Office, licensees shall maintain a record of attendance for two years following the two-year continuing education cycle and renewal of the respiratory care therapist license.

(3) Continuing education is acceptable if provided by:

(a) A medical organization or association accredited by the Oregon Medical Association, the Oregon Osteopathic Association, the American Medical Association Continuing Medical Education, the American Osteopathic Association, the American Nurses Association, the American Association for Respiratory Care, and its affiliates, to provide continuing education to physicians, nurses, or respiratory care practitioners;

(b) A hospital not accredited to provide continuing education but the continuing education provided meets the following requirements:

(A) The content of the course or program shall be relevant to the scope of practice of respiratory care as defined in ORS 688.800(4);

(B) The faculty shall be knowledgeable in the subject matter as evidenced by a degree from an accredited college or university and verifiable experience in the subject matter or teaching and clinical experience in the same or similar subject matter;

(C) Educational objectives shall be listed;

(D) The teaching methods shall be described, e.g., lecture, seminar, audiovisual, simulation;

(E) Evaluation methods shall document that the objectives have been met.

(c) An institution of higher education accredited by the Northwest Association of Secondary and Higher Schools or its successor, or the State Board of Higher Education, providing the course(s) meet the requirements of paragraph (a) of this subsection. Five hours of continuing education credit per course, and up to two-thirds of the continuing education requirement, can be obtained by successfully completing the course(s) with a grade "C" or above, or a "pass" for a pass/fail course;

(d) A respiratory care educational program accredited by the American Medical Association Committee on Allied Health Education and Accreditation in collaboration with the Committee On Accreditation for Respiratory Care, or its successor, or the Commission on Accreditation for Allied Health Education Programs offering an Associate Degree in Respiratory Care;

(e) The NBRC through passing the examination for initial certification as an Registered Respiratory Therapist (RRT), or Perinatal/Pediatric Respiratory Care Specialist (PPRCS), or the NBRC through passing the re-credentialing examination for a Certified Respiratory Therapist (CRT), RRT, or PPRCS. Fifteen hours of continuing education can be obtained by passing these certification and re-credentialing examinations;

(f) The NBRC through passing the examination for initial certification as a Certified Pulmonary Function Technician (CPFT), or Registered Pulmonary function Technician (RPFT). Seven and one-half hours of continuing education can be obtained by passing these certification examinations;

(g) Publication in a peer reviewed journal as the author or co-author of a clinical paper or abstract. A total of five credit hours will be accepted per biennium for the publication of articles or abstracts in professional journals;

(h) An established and approved organization conducting humanitarian activities in another state or country, that is providing respiratory care services as defined in ORS 688.800(6) under its auspices. The organization and services are subject to board approval on a case-by-case basis for continuing education credit.

(4) To ensure adequate proof of continuing education course completion is available for audit or investigation by the Health Licensing Office, practitioners shall maintain a record of attendance for two years following renewal;

(5) Respiratory care practitioners who instruct continuing education courses may obtain the same number of continuing education hours for each initial course taught during the biennium, in which the course is initially presented, as granted to course participants.

(6) Practitioners shall be awarded continuing education credit once for completion of the initial certification course for Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS) courses, and Neonatal Resuscitation Program (NRP). Up to four hours of continuing education credit may be obtained for each re-certification in ACLS, PALS, or NRP courses.

(7) Continuing education credit will not be granted for completion of the Basic Life Support (BLS) course.

(8) A person who does not meet continuing education requirements must reapply and meet requirements for licensure according to OAR 331-710-0010 at the time of application.

Stat. Auth.: ORS 676.605, 676.615 & 688.830

Stats. Implemented: ORS 676.605, 676.615 & 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 10-2004(Temp), f. & cert. ef. 11-8-04 thru 3-31-05; HLO 1-2005, f. 2-28-05 cert. ef. 3-1-05

ADMINISTRATIVE RULES

Insurance Pool Governing Board Chapter 442

Adm. Order No.: IPGB 1-2005

Filed with Sec. of State: 3-1-2005

Certified to be Effective: 3-1-05

Notice Publication Date: 1-1-04

Rules Adopted: 442-006-0000, 442-006-0010, 442-006-0020, 442-006-0030, 442-006-0040

Rules Repealed: 442-002-0005, 442-002-0010, 442-002-0015, 442-002-0020, 442-002-0025, 442-002-0030, 442-002-0035, 442-002-0040, 442-002-0045, 442-002-0050, 442-002-0055

Subject: Repealing all rules in Division 002 and adopting new rules in Division 006 to implement the Small Employer Health Plans program as directed by House Bill 2537 passed by the 72nd session of the Oregon Legislature.

Rules Coordinator: Nicole Shuba—(503) 378-4676

442-006-0000

Purpose and Statutory Authority

(1) OAR 442-006-0000 to 442-006-0040 are adopted to carry out the purposes of ORS 735.700 through 735.714 to increase access to health insurance and health care by providing health benefit plans for small employers.

(2) OAR 442-006-0000 to 442-006-0050 are adopted pursuant to the authority of the Insurance Pool Governing Board under ORS 735.708(5).

Stat. Auth.: ORS 735.708

Stats. Implemented: ORS 735.700 & 735.714

Hist.: IPGB 1-2005, f. & cert. ef. 3-1-05

442-006-0010

Definitions

(1) "Alternative Group Plan" (AGP) is a health benefit plan designed for adults only and excludes four state mandates under the Insurance Pool Governing Board's statutory authority found in ORS 735.710(7).

(2) "Children's Group Plan" (CGP) is a comprehensive benefit plan that covers children only. The CGP can be purchased by any employer in conjunction with the AGP or as a stand-alone product.

(3) "COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985 which is a federal mandate that requires employers sponsoring group health plans for twenty (20) or more employees to offer continuation of coverage to employees, their spouses, and dependent children who become unemployed.

(4) "Creditable coverage" is defined in ORS 743.730(8).

(5) "Dependent" means an eligible employee's spouse, eligible child or an adult disabled child.

(6) "Eligible Child" means an employee's unmarried child under the age of 23 including stepchild, legally adopted child, or a child under the employee's guardianship. A dependent child of a dependent child is not eligible for the CGP unless the employee has guardianship of the grandchild.

(7) "Eligible Employee" is defined in ORS 735.700(4).

(8) "Guaranteed Issue" requires contracted carriers to offer health benefit plans under this IPGB program without consideration of health status, claims experience, or geographic location if it is within the carrier's service area.

(9) "Guaranteed Renewal" means that a carrier shall not discontinue any policy during or at the termination of the contact period except in the circumstance specified in ORS 743.754(6).

(10) "Health Maintenance Organization" (HMO) means a health plan delivery system that provides comprehensive medical services to its members for a fixed, prepaid premium.

(11) "Opt Out" means the employee has met criteria that allow them to be excluded from the participation calculation. This criterion includes having other group coverage, Medicare, Medicaid, Indian Health Service (HIS), Tri-Care, or the Oregon Health Plan. Opt Out criterion does not include individual health benefit plans.

(12) "Participation Rate" is the percentage of eligible participants that a carrier requires an employer to enroll in order to qualify for a group policy.

(13) "Portability Coverage" is defined in ORS 743.760(1)(c).

(14) "Pre-existing Condition" is defined in ORS 743.731(27).

(15) "Preferred Provider Organization" (PPO) is a health plan delivery system in which providers are under contract with insurance company to provide medical care at a discounted or negotiated price for the health care services.

(16) "Premium" is defined in ORS 735.700(7).

(17) "Small Employer" is a person, firm, corporation, partnership or association actively engaged in business that, on at least 50 percent of the working days during the preceding year, employed no more than 50 eligible employees and no fewer than two eligible employees, the majority of whom are employed within this state, and in which a bonafide partnership or employer-employee relationship exists. 'Small Employer' includes corporations that are eligible to file a consolidated tax return pursuant to ORS 317.715.

(18) "Small Employer Health Plan" (SEHP) means the alternative group plan (AGP) and the children's group plan (CGP).

Stat. Auth.: ORS 735.708

Stats. Implemented: ORS 735.700 & 735.714

Hist.: IPGB 1-2005, f. & cert. ef. 3-1-05

442-006-0020

Program Duration

IPGB will offer the small employer health plans to employers for as long as authorized by the Oregon legislature.

Stat. Auth.: ORS 735.708

Stats. Implemented: ORS 735.700 & 735.714

Hist.: IPGB 1-2005, f. & cert. ef. 3-1-05

442-006-0030

Carrier and Plan Selection

(1) IPGB will select carriers to offer the SEHPs through a competitive bidding process. The process will be carried out by releasing a request for proposal (RFP). Selection criteria for the carriers includes, but is not limited to:

(a) Must meet all technical specifications as outlined in the RFP.

(b) Must offer both the Alternative Group Plan (AGP) and the Children's Group Plan (CGP) and may offer either or both as Preferred Provider Organization (PPO), Health Maintenance Organization (HMO) or other plan approved by IPGB.

(c) Must be able to administer the CGP independently without employees enrolled in the AGP, and must have the ability to track the children back to the employee and employer.

(d) Must be in the SEHI market and offer both plans throughout their SEHI service area.

(e) Must have the ability to extract an assessment fee from the premium and remit those funds to the IPGB quarterly for agent training and program marketing. This assessment is subject to legislative approval and shall not be implemented until notified by the IPGB that legislative approval has been granted.

(f) Must provide required data as developed by the IPGB.

(2) Carriers are selected for a three-year period. No new carriers will be allowed to participate during those three years, unless there is a loss of statewide coverage.

(3) Annually, the board will review proposed modifications to benefits and rates. Rate review may occur more frequently than annually if any contracted carrier terminates their participation in the program. Remaining carriers will then have the opportunity to negotiate new rates. Approved rate adjustments will take effect March 1 of each year for all carriers and employers regardless of their anniversary date.

(4) Carriers may withdraw from the program by giving formal written notice to the IPGB 180 days from the date of notice or the annual expiration date of its plans with employers, whichever is later. A carrier that withdraws may not reenter the program for a minimum of twenty-four (24) months. Upon completing the 24-month waiting period carriers will be eligible to submit a proposal at the next RFP.

(5) Carriers must use the following underwriting guidelines:

(a) Both plans must be Guaranteed Issue. Eligible employees/dependents currently insured by the Oregon Medical Insurance Pool (OMIP) will not be eligible for Opt-Out.

(b) Carriers shall develop a separate pool for the Small Employer Health Plans from their other small employer pool(s).

(c) Once an employer enrolls in either the AGP or the CGP they are only allowed to change carriers at annual renewal.

(A) Under the new plan, the member's lifetime maximum may be reduced by the benefit amount already paid under the previous plan.

(B) Benefit information shall be provided to the new carrier by the previous carrier within 100 calendar days.

(C) The carrier must use the same lifetime maximum reduction calculation for all employers enrolled in a SEHP.

(d) Both plans will be subject to standard state continuation, portability, and COBRA regulations. Reaching a lifetime maximum does not create portability eligibility.

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(e) The pre-existing condition provisions used in the SEHI market shall apply as well as credits for prior creditable coverage.

(f) An employer may only select benefit plans on their plan anniversary, except when the employer group had no eligible children when they purchased the AGP. In this situation the employer may purchase the CGP within 30 days of a qualifying event.

(g) An employer must use the same carrier for both the AGP and CGP.

(h) A small employer health benefit plan shall be renewable at the option of the policyholder and shall not be discontinued by the carrier during or at the termination of the contract period except in the circumstances specified in ORS 743.737(5) and (6).

Stat. Auth.: ORS 735.708

Stats. Implemented: ORS 735.700 & 735.714

Hist.: IPGB 1-2005, f. & cert. ef. 3-1-05

442-006-0040

Employer Eligibility

(1) In order for an employer to be eligible to purchase one or both of the SEHPs, an employer must meet the following criteria:

(a) The employer must have at last two and no more than 50 employees working at least either 17.5 hours per week, or a higher threshold established by the carrier/employer, whichever is more.

(b) All eligible employees must be offered the selected plan or plans.

(c) The employer must meet the following uninsured criteria:

(A) Existing businesses may not have been insured on or after July 1, 2003.

(B) New businesses formed after July 1, 2003 and never offered insurance.

(2) The employer shall have exclusive control of the plan(s) that will be offered to their employees. They will be able to select from the following menu:

(3) Employee only — Alternative Group Plan.

(4) Eligible Children only — Children's Group Plan.

(5) Employee and Spouse Only — Alternative Group Plan.

(6) Employee and Dependents — Adults/Alternative Group Plan; Eligible Children/Children's Group Plan.

(7) The employer shall make a minimum contribution of \$50.00 per eligible employee but may contribute up to 100% of the total premium. If the employer selects only the Children's Group Plan, the \$50.00 contribution per eligible employee will be applied to the family group but the employer may contribute up to 100% of the total premium. Employer contribution may be modified by the IPGB during the annual rate and benefit review.

(8) The Alternative Group Plan requires 100% participation of all eligible employees.

(9) The Children's Group Plan requires 75% participation of the eligible employees and 100% of a family group.

(10) An employer may only change carriers effective March 1 of each calendar year. An employer may change carriers with a different effective date only if their current carrier withdraws from the program.

Stat. Auth.: ORS 735.708

Stats. Implemented: ORS 735.700 & 735.714

Hist.: IPGB 1-2005, f. & cert. ef. 3-1-05

Oregon Department of Education
Chapter 581

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

Filed with Sec. of State: 3-15-2005

Certified to be Effective: 3-15-05 thru 9-1-05

Notice Publication Date:

Rules Amended: 581-022-1110

Subject: The amendments clarify requirements for the Certificate of Initial Mastery as required by the 2003 Legislative Assembly. School districts are making decisions regarding class offerings and staffing for school year 2005-2006. This clarification will allow them to make decisions that are appropriate to statutory requirements.

If you have a question regarding this rule, please contact Randy Harnisch at (503) 378-3600, ext. 2350 or e-mail randy.harnisch@state.or.us. For a copy of this rule, please contact Debby Ryan at (503) 378-3600, ext. 2348 or e-mail debby.ryan@state.or.us.

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-022-1110

Certificate of Initial Mastery Requirements

(1) Each district school board shall award a Certificate of Initial Mastery (CIM) to students who: Achieve all CIM level performance standards in the academic content standard areas of English, mathematics, and science, and additional local district CIM requirements, if any, as defined by district school board policy.

(2) School districts shall ensure that students have the opportunity to demonstrate the ability to learn, think, retrieve information, use technology and work effectively as individuals, and as individuals in groups.

(3) School districts shall administer all state assessments that are offered at grades 3, 4, 5, 6, 7, 8 and high school.

(4) School districts shall offer additional services or alternative public education options to students who do not meet the standards or who exceed all of the standards at any benchmark level. If after one year, the student, for whom such services or options were made available, has not yet met all standards, the school district, with the consent of the parents, shall make an appropriate placement as described in ORS 329.485(5).

(5) School districts shall award an alternative certificate specifying benchmarks and standards achieved to those students who, having received appropriate additional services and for whom alternative learning options were made available, do not meet the standards required for the CIM.

(6) School districts that have been granted timeline waivers under OAR 581-022-1920 must document both on awarded CIM certificates and student's records, the requirements that have been waived.

(7) Each school district board is authorized to grant individual students a waiver in accordance with ORS 329.487. Students receiving such a waiver may receive a CIM if all non-waived requirements are met. Districts must document both on awarded CIM certificates and in the students' records the requirements that have been waived.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 329.075, 329.465 & 329.485

Hist.: EB 2-1997, f. & cert. ef. 3-27-97; ODE 15-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; ODE 29-2001, f. & cert. ef. 12-20-01; ODE 17-2002, f. & cert. ef. 6-10-02; ODE 5-2005(Temp), f. & cert. ef. 3-15-05 thru 9-1-05

Adm. Order No.: ODE 6-2005(Temp)

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Certified to be Effective: 3-15-05 thru 9-1-05

Notice Publication Date:

Rules Amended: 581-022-1120

Subject: The amendments clarify requirements for the Certificate of Initial Mastery as required by the 2003 Legislative Assembly. School districts are making decisions regarding class offerings and staffing for school year 2005-2006. This clarification will allow them to make decisions that are appropriate to statutory requirements.

If you have a question regarding this rule, please contact Randy Harnisch at (503) 378-3600, ext. 2350 or e-mail randy.harnisch@state.or.us. For a copy of this rule, please contact Debby Ryan at (503) 378-3600, ext. 2348 or e-mail debby.ryan@state.or.us.

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-022-1120

Certificate of Advanced Mastery Requirements

(1) By September 1, 2006, school districts shall:

(a) Develop a process that provides each student the opportunity to develop an education plan and build an education profile in grades 7-12 with adult guidance that is reviewed and updated periodically (at least annually) and supported by a Comprehensive Guidance Program as defined in OAR 581-022-1510.

(b) Make available to students the career learning frameworks (i.e. arts and communications, business and management, health services, human resources, industrial and engineering, and natural resource systems) as tools to guide students in the development of their education plans and learning experiences.

(c) Develop opportunities for community and business partnerships that support the student requirements in section (3)(a)-(f) of this rule.

(d) Develop career-related learning experience opportunities for students that may include school based, work-based, or community-based experiences that connect to the student's education plan.

(e) Assist students in connecting post high school opportunities with their career goals identified in the education plan, including: four-year colleges and universities, community colleges, workforce, apprenticeships, the military, private career schools and others.

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(f) Prior to the 2008–2009 school year, school districts shall demonstrate continued progress toward implementation of the Certificate of Advanced Mastery including section (1)(a)–(e) of this rule.

(2) Upon adoption of the performance standard for extended application (3)(c) and career-related learning standards (3)(d) by the State Board of Education, school districts shall determine if students meet the performance standard by using assessment tools based upon criteria approved by the State Board of Education.

(3) Beginning September 1, 2008, each school district board shall award a Certificate of Advanced Mastery (CAM) to students who:

(a) Develop an education plan in which the student:

(A) Identifies personal and career interests;

(B) Identifies tentative educational and career goals and post high school next steps (i.e. college, workforce, military, apprenticeship, other);

(C) Set goals to prepare for transitions to next steps identified in (3)(a)(B);

(D) Designs, monitors and adjusts a course of study that meets the interest and goals of the student as described in subsections (A), (B) and (C) of section (3)(a) of this rule that includes but is not limited to:

(i) Appropriate coursework and learning experiences;

(ii) Identified career-related learning experiences; and

(iii) Identified extended application opportunities.

(b) Develop an education profile in which the student:

(A) Monitors progress and achievement toward standards;

(i) CIM academic standards;

(ii) Career-related learning standards;

(iii) Extended application standard; and

(iv) Other standards where appropriate (e.g. PASS, industry standards).

(B) Documents other personal accomplishments determined by the student or school district.

(C) Reviews progress and achievement in subsection (A) and (B) of section (3)(b) of this rule at least annually.

(c) Demonstrate proficiency in extended application through a collection of evidence based on performance standards as adopted by the State Board of Education;

(d) Demonstrate proficiency in career-related learning standards in the following areas: personal management, problem solving, communication, teamwork, employment foundations, and career development based on performance standards as adopted by the State Board of Education.

(e) Participate in career-related learning experiences in which the student:

(A) Identifies career-related learning experiences in the education plan related to personal and career interests and goals;

(B) Identifies expectations for learning and the academic and career-related learning standards the student is preparing to meet;

(C) Reflects on the learning experience to determine if expectations in section (3)(e)(B) have been met; and

(D) Meets any additional local district requirements.

(f) Achieve specific Certificate of Initial Mastery (CIM) performance standards in English, mathematics, and science as follows:

(A) Meet the CIM knowledge and skill test in reading;

(B) Meet the CIM work sample requirements in speaking;

(C) Meet the CIM work sample requirements in writing; and

(D) Meet the CIM work sample requirements or the CIM knowledge and skills test in mathematics, and science.

Stat. Auth.: ORS 329.475

Stats. Implemented: ORS 329.007, 329.035, 329.075, 329.447, 329.475, 329.485 & 329.855

Hist.: ODE 2-1999, f. & cert. ef. 1-12-99; ODE 12-2002, f. & cert. ef. 4-15-02; ODE 6-2005(Temp), f. & cert. ef. 3-15-05 thru 9-1-05

Adm. Order No.: ODE 7-2005(Temp)

Filed with Sec. of State: 3-15-2005

Certified to be Effective: 3-15-05 thru 9-1-05

Notice Publication Date:

Rules Amended: 581-022-1210

Subject: The amendments clarify requirements for the Certificate of Initial Mastery as required by the 2003 Legislative Assembly. School districts are making decisions regarding class offerings and staffing for school year 2005-2006. This clarification will allow them to make decisions that are appropriate to statutory requirements.

If you have a question regarding this rule, please contact Randy Harnisch at (503) 378-3600, ext. 2350 or e-mail randy.harnisch@

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

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-022-1210

District Curriculum

(1) Each school district shall provide a planned K–12 instructional program.

(2) The planned K–12 instructional program shall include the following:

(a) Common Curriculum Goals and academic content standards to include:

(A) English;

(B) Mathematics;

(C) Science;

(D) Social Science (including history, geography, economics and civics);

(E) The Arts;

(F) Second Languages;

(G) Health Education; and

(H) Physical Education.

(b) Additional Common Curriculum Goals for Technology.

(c) Essential Learning Skills, as contained in the Common Curriculum Goals and academic content standards; and

(d) Career-related learning standards, as contained in the Common Curriculum Goals and academic content standards.

(3) The school district shall also provide instruction in other areas identified in chapter 581, division 022 of the Oregon Administrative Rules, including:

(a) Infectious diseases, including AIDS/HIV and Hepatitis B;

(b) Prevention education in drugs and alcohol; and

(c) Emergency plans and safety programs.

(4) The school district is also accountable to provide instruction in compliance with requirements set forth in ORS Chapter 336, Conduct of Schools Generally.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 329.045

Hist.: EB 6-1997, f. & cert. ef. 6-9-97; ODE 7-2005(Temp), f. & cert. ef. 3-15-05 thru 9-1-05

Oregon Economic and Community Development Department Chapter 123

Adm. Order No.: EDD 1-2005

Filed with Sec. of State: 2-25-2005

Certified to be Effective: 2-25-05

Notice Publication Date: 2-1-05

Rules Adopted: 123-065-0005, 123-065-0095, 123-065-0255, 123-065-0365, 123-065-1000, 123-065-1050, 123-065-1553, 123-065-1557, 123-065-1670, 123-065-1920, 123-065-3445, 123-065-3545, 123-065-4313, 123-065-4318, 123-065-4323, 123-065-4325, 123-065-4328, 123-065-4345, 123-065-4355, 123-065-4365, 123-065-4375, 123-065-4600, 123-065-4800, 123-065-8000, 123-065-8100, 123-065-8200, 123-065-8300, 123-065-8400

Rules Amended: 123-065-0000, 123-065-0010, 123-065-0080, 123-065-0090, 123-065-0100, 123-065-0140, 123-065-0150, 123-065-0200, 123-065-0210, 123-065-0220, 123-065-0230, 123-065-0240, 123-065-0300, 123-065-0310, 123-065-0320, 123-065-0330, 123-065-0350, 123-065-1500, 123-065-1510, 123-065-1520, 123-065-1530, 123-065-1540, 123-065-1550, 123-065-1560, 123-065-1570, 123-065-1580, 123-065-1590, 123-065-1600, 123-065-1610, 123-065-1620, 123-065-1650, 123-065-1700, 123-065-1710, 123-065-1720, 123-065-1730, 123-065-1740, 123-065-1750, 123-065-2500, 123-065-2510, 123-065-2520, 123-065-2530, 123-065-2540, 123-065-2550, 123-065-2700, 123-065-3000, 123-065-3030, 123-065-3110, 123-065-3130, 123-065-3140, 123-065-3170, 123-065-3200, 123-065-3230, 123-065-3300, 123-065-3330, 123-065-3360, 123-065-3400, 123-065-3430, 123-065-3460, 123-065-3480, 123-065-3500, 123-065-3530, 123-065-3560, 123-065-3600, 123-065-3800, 123-065-3830, 123-065-3850, 123-065-4000, 123-065-4010, 123-065-4020, 123-065-4050, 123-065-4060, 123-065-4070, 123-065-4100, 123-065-4110, 123-065-4120, 123-065-4130, 123-065-4140, 123-065-4200, 123-065-4220, 123-065-4230, 123-065-4240, 123-

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065-4250, 123-065-4260, 123-065-4270, 123-065-4280, 123-065-4300, 123-065-4310, 123-065-4315, 123-065-4320, 123-065-4330, 123-065-4340, 123-065-4380, 123-065-4400, 123-065-4410, 123-065-4420, 123-065-4430, 123-065-4440, 123-065-4450, 123-065-4460, 123-065-4470, 123-065-4480, 123-065-4500, 123-065-4510, 123-065-4520, 123-065-4530, 123-065-4540, 123-065-4550, 123-065-4560, 123-065-4570, 123-065-4580, 123-065-4590, 123-065-4700, 123-065-4710, 123-065-4720, 123-065-4730, 123-065-4740, 123-065-4750, 123-065-4760, 123-065-4950, 123-065-4960, 123-065-4970, 123-065-4980, 123-065-4990, 123-065-7000, 123-065-7100, 123-065-7200, 123-065-7300, 123-065-7400, 123-065-7500, 123-065-7600, 123-065-7700, 123-070-1000, 123-070-1100, 123-070-1150, 123-070-1200, 123-070-1300, 123-070-1500, 123-070-1600, 123-070-1700, 123-070-1800, 123-070-1900, 123-070-2000, 123-070-2100, 123-070-2200, 123-070-2300, 123-070-2400

Rules Repealed: 123-065-0360, 123-065-2000, 123-065-4150, 123-065-4160, 123-065-4343, 123-065-4360, 123-065-4370

Rules Ren. & Amended: 123-065-0048 to 123-065-0049, 123-065-0400 to 123-065-1900, 123-065-0410 to 123-065-1910, 123-065-0420 to 123-065-4620, 123-065-0430 to 123-065-4630, 123-065-0440 to 123-065-4640, 123-065-4390 to 123-065-4610, 123-065-4690 to 123-065-4565

Subject: Fully update Divisions 065 and 070 (First-Source Hiring Agreements), especially for new statutory codification (ORS Ch. "285C") and statutory revisions by Oregon Laws 2003 (Chapters 65, 239, 432, 558 and 662). Correct for errors, and otherwise remove, rewrite, expand or restructure text to be more accessible and accurate, based on practical experience. Improve boundary change instructions. Create common set of guidelines for designations and boundary change requests. Enhance elements for enterprise zone designation applications, including requirement and competitive criteria related to having project-ready industrial sites, elimination of newspaper notice for application round, and independence of director's determination. Clarify that a firm can qualify with closure/curtailment more than 30 miles away that does not transfer jobs into enterprise zone. Address revocation/termination for E-commerce zones, and improved connectedness with tax credit per new laws. Permanently adopt administrative rules for Rural Renewable Energy Development Zones (RREDZ).

Rules Coordinator: Tawni Bean—(503) 986-0149

123-065-0000

Definitions

As used in this division of administrative rules, unless the context indicates otherwise:

(1) **Applicant** means the Sponsoring Government or Governments submitting the application for an enterprise zone designation as described in OAR 123-065-1500 to 123-065-1599.

(2) **Census Statistical Unit** includes any standard geographic area, legal entity or administrative designation for which data is available through the most recent federal decennial census, such as the following: County, census county subdivision, incorporated place, census urbanized area, census designated (unincorporated) place, ZIP code, census tract, census block numbering area (BNA), census block group (BG) or census block.

(3) **Department** means the State of Oregon Economic and Community Development Department, as (re) organized and created under ORS 285A.070, unless specified otherwise.

(4) **Director** means the Director of the Department appointed under ORS 285A.070.

(5) **Preexisting Enterprise Zone** means an enterprise zone:

(a) Designated within three years of an enterprise zone's being Terminated by Statute; and

(b) For which at least one-half of its cosponsors comprise a majority of the cosponsors of the enterprise zone Terminated by Statute.

(6) **Sponsoring Government** means a county or city participating as an Applicant in proposing an enterprise zone.

(7) **Terminated by Statute** means the automatic termination of an enterprise zone by operation of law after more than ten years under ORS 285C.245(2).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 2285C

Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 10-1995, f. & cert. ef. 12-19-95; EDD 1-1997, f. & cert. ef. 1-7-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0005

Organization of this Division

(1) The first two digits of the final four digits of each rule number, as well as subtitles, indicate a "subdivision" of this division of administrative rules.

(2) These subdivisions are also grouped as follows, by reference to the first digit of the last four digits of the rule number:

(a) Zero/one: fundamental matters of Oregon enterprise zones, such as their creation, modification, termination and local sponsorship;

(b) Two: special issues, including but not limited to additional requirements imposed on a benefiting business by the local zone sponsor;

(c) Three: long-term rural enterprise zone tax incentives under ORS 285C.400 to 285C.420;

(d) Four: regular three to five-year exemption on qualified property of an eligible business firms;

(e) Seven: special features for electronic commerce investments; and

(f) Eight: energy or environmental matters, including Rural Renewable Energy Development Zones (RREDZs).

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.050(5), 285C.060(1), 285C.370

Stats. Implemented: ORS 285C

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0010

Enterprise Zone Sponsorship

An enterprise zone shall be sponsored by, and only by, the governing body of each city or county jurisdiction in which it is located, with the following exceptions:

(1) A county need not cosponsor a zone, if the zone contains only incorporated territory in that county.

(2) A county need not cosponsor a zone, if:

(a) The only unincorporated territory inside the zone lies within the urban growth area between the corporate limit and the urban growth boundary of a city that is the sponsor or a cosponsor of the zone;

(b) Such unincorporated territory has no residents; and

(c) The county granted consent for the city to sponsor the zone through a resolution of the governing body of the county.

(3) A county or city need not cosponsor a zone, if the only part of the zone inside that jurisdiction consists of stretches of road, tracks, waterways, transmission lines or right of ways that nominally connect separate areas of the zone.

(4) A city need not cosponsor a zone, if:

(a) The county is the sponsor or a cosponsor of the zone;

(b) Less than the zone's entire area lies within less than the entire jurisdiction of the city; and

(c) The city granted consent for the county to sponsor the zone through a resolution of the governing body of the city.

(5) Except as provided under ORS 285C.115(3), neither a city nor county need sponsor a reservation enterprise zone designated under ORS 285C.306 or an amendment to such a zone that adds land:

(a) Held in trust by the U.S. for the benefit of the Indian Tribe governed by the zone sponsor; and

(b) Over which the non-sponsoring city or county government does not effectively have jurisdiction.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.668(1)

Stats. Implemented: ORS 285C.050, 285C.065, 285C.115, 285C.250, 285C.306 & 285C.320

Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 10-1995, f. & cert. ef. 12-19-95; EDD 1-1997, f. & cert. ef. 1-7-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0049

Maximum Number of Enterprise Zones

(1) The maximum number of enterprise zones that may be designated is 49, plus:

(a) Any designation based on a Federal Enterprise Zone under ORS 285C.085; and

(b) Any designation of a reservation enterprise zone under ORS 285C.306. (Currently, Warm Springs Indian Reservation is the only place so allowed based on the most recent decennial census data)

(2) At the time of the last amendment of this rule, 49 enterprise zones are in existence by designation of the Director (or tribal government), as follows:

(a) Fourteen under ORS 285C.080;

(b) One under ORS 285C.085;

(c) Thirty-three under ORS 285C.250; and

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(d) One under ORS 285C.306.

(3): This rule neither affects nor is it necessarily affected by the designation of any Federal Enterprise Zone (see OAR 123-065-1710).

Stat. Auth.: ORS 285A.075(5), 285A.110910 & 285B.668(1)

Stats. Implemented: ORS 285C.050, 285C.065, 285C.115, 285C.250, 285C.306 & 285C.320

Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 9-2000, f. & cert. ef. 5-2-00;

Renumbered from 123-065-0048, EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0080

Boundaries and Dimensions

For purposes of an enterprise zone designation or boundary change:

(1) Except as allowed in OAR 123-065-0090, the straight-line distance between any two points within the zone may not exceed 12 miles.

(2) The total area of the zone may not exceed 12 square miles, not including:

(a) Areas below the ordinary high water mark of navigable bodies of water; and

(b) Roads, tracks, transmission lines or right of ways that nominally connect separate areas of the zone.

(3) Except as allowed in OAR 123-065-0090, a separate area of the zone must be five or fewer miles of straight-line distance away from another area of the zone as measured between the two closest points of each area.

(4) No part of the zone may be inside the boundaries of another enterprise zone.

(5) No part of this rule shall be interpreted to exclude enterprise zones designated or amended under federal law or under ORS 285C.085 or 285C.306.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.065 & 285C.090

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 13-1997, f. & cert. ef. 11-10-97; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0090

Extended Distances in Rural Zones

For purposes of ORS 285C.050(18) and 285C.090(4):

(1) This rule applies only to nonurban enterprise zones.

(2) The maximum distance allowed in OAR 123-065-0080(1) is increased from 12 to:

(a) Twenty-five lineal miles, if no area of the zone is in a county listed in section (5) of this rule; or

(b) Twenty lineal miles, if some but not all of the area of the zone lies in a county listed in section (5) of this rule.

(3) The maximum distance allowed in OAR 123-065-0080(3) is increased from 5 to 15 lineal miles if none of the separate area is in a county listed in section (5) of this rule.

(4) In accordance with ORS 285C.120(2), the Director may waive a limitation in section (2) or (3) of this rule, to allow even greater distance for a particular enterprise zone designation or boundary change:

(a) As specifically requested in resolutions adopted by the Applicant or the current zone sponsor and any proposed cosponsor;

(b) Such that the waiver is part of the Director's order designating or changing the boundary of the enterprise zone boundary; and

(c) If evidence or indications as evaluated by the Department satisfy points described in OAR 123-065-0095.

(5) The counties of this state that are too densely populated for purposes of this rule include:

(a) Any county for which a shrinkage of its area, growth in its population or combination thereof results in a population density for the county in excess of 100 persons per square mile (In this case, ORS 285C.120(1) would govern an enterprise zone, the dimensions of which had otherwise been allowed as described in this rule);

(b) Any future, new county for which the actual population and area correspond to a population density for the county in excess of 100 persons per square mile; and

(c) The following existing counties (unless there is a change in the county's circumstances contrariwise to subsection (a) of this section):

(A) Benton County;

(B) Clackamas County;

(C) Marion County;

(D) Multnomah County;

(E) Washington County; and

(F) Yamhill County.

(6) For purposes of section (5) of this rule, the population density of a county is computed by dividing the latest estimate for the county's total population by the current area of the county in terms of square miles.

(7) Nothing in this rule affects the restriction of up to but not more than 12 square miles for total enterprise zone area, as described in OAR 123-065-0080(2).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.065, 285C.090, 285C.120, 285C.350

Hist.: EDD 13-1997, f. & cert. ef. 11-10-97; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0095

Tests for Waiving Rural Distance Maxima

For a waiver as described in OAR 123-065-0090(4), the Director must find that each of the following three points is satisfied:

(1) The impracticality of separate enterprise zones as an alternative, such that, for example:

(a) An area or areas proposed for inclusion in the enterprise zone are isolated sites or small communities;

(b) Administration of such area as its own zone is infeasible; or

(c) The number of enterprise zones remaining to be designated is limited relative to future designations sought by larger places.

(2) Effective administration within the overall requested enterprise zone boundary is demonstrated by facts such as the following:

(a) Located entirely in one county;

(b) Relatively direct and efficient travel distances by road;

(c) As need be, appointed zone manager can actively serve entire zone;

(d) The existing zone sponsor devotes sufficient resources for management of the extended zone; or

(e) Local personage will act as special contact or co-manager for particular area.

(3) Furtherance of the goals and purpose of applicable state policies is indicated, if development of areas to be commonly included in the zone do not directly undermine state land use goals, and by special circumstances such as the following:

(a) The opportunity to efficiently and expeditiously site a significant business investment;

(b) The area exhibits particular hardship, but also the potential for economic development; or

(c) The local jurisdictions involved in the boundary change express strong preference for it as opposed to a separate enterprise zone.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.120(2)(b)

Stats. Implemented: ORS 285C.120

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0100

Nonurban and Urban Zones

(1) "Enterprise zone" means an area designated, as defined in ORS 285C.050(8), and categorized as either "nonurban" or "urban" under ORS 285C.050(14) or (21).

(2) As used in ORS 285C.050(21), "regional or metropolitan urban growth boundary" means:

(a) The Metro/Portland-area regional urban growth boundary;

(b) The urban growth boundary encompassing:

(A) Bend;

(B) Corvallis;

(C) Eugene and Springfield; or

(D) Salem and Keizer; or

(c) The urban growth boundaries encompassing Medford and Central Point.

(3) For the purposes of ORS 285C.050(21), "inside" means that an enterprise zone may not be designated nor amended, such that the zone includes areas both inside and outside of a regional or metropolitan urban growth boundary as defined in section (2) of this rule, except for a (nonurban) reservation enterprise zone.

(4) If a new or newly modified regional or metropolitan urban growth boundary intersects an existing enterprise zone, the zone's categorization as either nonurban or urban shall remain unchanged, until such time as a subsequent modification to the regional or metropolitan urban growth boundary or the definition thereof situates the zone entirely outside or inside of that boundary and hence reverses the zone's categorization as nonurban or urban.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.668(1)

Stats. Implemented: ORS 285C.050 - 285C.250

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 13-1997, f. & cert. ef. 11-10-97; EDD 1-2005, f. & cert. ef. 2-25-05

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123-065-0140

The Sponsor of an Enterprise Zone

As defined under ORS 285C.050(19), described in OAR 123-065-0010, and used in ORS 285C.050 to 285C.250 and in this division of administrative rules:

(1) "Sponsor" or "zone sponsor" means:

(a) The single city or county (and/or tribal government) that was the Applicant for the most recent designation of the enterprise zone; or

(b) Collectively, the city and county, cities, cities and county, counties, city and counties, or cities and counties (and/or tribal government) that comprise:

(A) The Applicant for the most recent designation of the enterprise zone; and

(B) Such city or county, if any, that joined the zone since designation as part of a change to the zone boundary under ORS 285C.115(7).

(2) Depending on the particular context, "a sponsor" or "a zone sponsor" may refer to a single sponsoring jurisdiction or cosponsor of the enterprise zone included in subsection (1)(b) of this rule, although no such reference shall be construed as superseding or interfering with ORS 285C.105(2), which compels all cosponsors to act jointly in fulfilling the duties of the zone sponsor and in taking any action with respect to the zone, except for:

(a) Restriction on hotel/resort eligibility; or

(b) Local incentives.

(3) The zone sponsor does not include and is not any city or county that simply consented to having part of its territory contained in the zone (see OAR 123-065-0010).

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.668(1)

Stats. Implemented: ORS 285C.050 - 285C.250 & 285C.320

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0150

Assessment and Tax Years

As used in ORS 285C.050 to 285C.250 and this division of administrative rules (consistent with the definitions under ORS 285C.050(1), (20) and (22) and 308.007), "year" or "assessment year" means a calendar year of January 1 to December 31, unless:

(1) Modified as (property) "tax year" which is the 12-month period from July 1 to June 30; or

(2) The context indicates or implies a 12-month period following or preceding an event.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285C.660(1)

Stats. Implemented: ORS 285C

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0200

Local Zone Manager

For purposes of ORS 285C.105(1)(a):

(1) The appointment of a local zone manager by the sponsor of an enterprise zone shall be accomplished through an official declaration either by each cosponsor or by all such jurisdictions in some collective fashion.

(2) The enterprise zone sponsor or a particular cosponsor may delegate the authority to appoint the local zone manager to a person or body including but not limited to the current local zone manager.

(3) The local zone manager may be specified as an established position at a local agency or organization, whether public or private, as opposed to a named person.

(4) The enterprise zone sponsor may appoint up to but not more than two persons to serve as local co-managers of the zone.

(5) Except as explicitly proscribed by the zone sponsor, the local zone manager shall act as the agent and representative of the enterprise zone in regard to any and all ministerial, intergovernmental, technical or promotional functions of the zone sponsor.

(6) The local zone manager may be empowered by and on behalf of the sponsor or of a cosponsor of the enterprise zone to make discretionary decisions that do not specifically require adoption of a resolution by the sponsor's governing body or bodies under ORS 285C.050 to 285C.250 or as described in this division of administrative rules.

(7) Whenever a local zone manager is appointed or a new person fills the appointed position, written notice of such shall be provided to the Department, the Department of Revenue and the county assessor soon afterwards.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285C.660(1)

Stats. Implemented: ORS 285C.105

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0210

Reporting by the Enterprise Zone Sponsor

(1) Within six months after designation of any enterprise zone, the sponsor of the zone shall provide to the Department, the Department of Revenue, the county assessor, the contact agency for first-source hiring agreements and local institutions involved in marketing the zone the following information (even if contained in the application for designation):

(a) A description and examples of marketing plans, efforts or materials for the zone;

(b) A final inventory and references to associated enabling instruments (such as local ordinances) for any local incentive proposed as binding in the application;

(c) A list, map or other information necessary for identifying publicly owned land or buildings that are available for lease or purchase by an eligible business firm within the zone under ORS 285C.110 (see OAR 123-065-0255);

(d) For an urban zone, indices identifying all land within the zone (specific tax lots or street addresses needed only for property at which eligible development may occur);

(e) Description of any policies, conditions or reasonable requirements that have been adopted or that the sponsor would seek to implement and enforce under ORS 285C.150, 285C.155 or 285C.160 with respect to authorized business firms;

(f) Confirmation/appointment of local zone manager as described in OAR 123-065-0200; and

(g) The final form of election to allow hotel, motel or destination resorts as eligible business firms in all or certain jurisdictions of the enterprise zones, for which newly adopted resolution(s) are necessary to effectively change an election made by resolution(s) adopted for purposes of the application.

(2) Each year by November 1, the zone sponsor shall provide to the Department, the Department of Revenue, the county assessor, the contact agency for first-source hiring agreements and local institutions involved in marketing the enterprise zone:

(a) A list of all outstanding investments proposed by business firms that have been and remain actively authorized in the zone, but that are not yet qualified for (most of) the investment, along with any updated estimates of expected new jobs or the cost of proposed qualified property;

(b) Commentary on efforts to assist authorized and qualified business firms or the county assessor with new or ongoing enterprise zone exemptions; and

(c) Updated information or recently revised materials pertaining to:

(A) What is listed in section (1) of this rule; and

(B) Such matters as the zone boundary, public outreach, available industrial land within the zone, and local training and education resources.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.660(1)

Stats. Implemented: ORS 285C.065, 285C.070, 285C.105 & 285C.110

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0220

Authorization Filing Fee

For purposes of ORS 285C.140(1)(c):

(1) When applying for authorization under ORS 285C.140, an eligible business firm may be required to pay a fee that is set by the sponsor of the enterprise zone at:

(a) Zero — that is, the fee is waived;

(b) \$200; or

(c) Any amount not exceeding 0.1 percent of the total estimated cost of the firm's proposed investment in qualified property.

(2) The requirement of an authorization filing fee shall be consistent and uniformly applied by the sponsor of the enterprise zone, including but not necessarily through written guidelines, such that the sponsor may vary the fee consistent with section (1) of this rule according to certain criteria or situational factors such as the size or nature of the eligible business firm or its proposed investment.

(3) The factors under which the requirement, waiver or amount of an authorization filing fee may deviate from the usual practice shall be defined through written guidelines.

(4) Failure by an eligible business firm to pay the required filing fee at the time of the firm's submitting an application for authorization may be grounds for the local zone manager's refusal to process or to approve the application on behalf of the zone sponsor.

(5) A zone sponsor that requires an authorization filing fee shall collect payment by check in U.S. funds with the application for authorization.

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(6) If either the zone sponsor or the county assessor deny the application of an eligible business firm for authorization under ORS 285C.140, any payment of an authorization filing fee shall be refunded in full to the eligible business firm.

(7) If both the zone sponsor and the county assessor have approved an eligible business firm's application for authorization under ORS 285C.140, neither the zone sponsor nor the county assessor may later deny the eligible business firm's authorization, qualification or exemption because of failure to receive or collect payment of an authorization filing fee.

(8) If a business firm is denied an exemption under ORS 285C.170 or 285C.175, the zone sponsor shall be under no obligation to refund any amount of an authorization filing fee that was paid by the business firm, unless the business firm is ineligible under ORS 285C.135 or was otherwise authorized improperly or by mistake.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.140(1)(c)
Stats. Implemented: ORS 285C.140
Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0230

Additional Conditions in an Urban Enterprise Zone

For purposes of additional conditions imposed on eligible business firms by the sponsor of an urban enterprise zone under ORS 285C.150:

(1) The sponsor of the enterprise zone shall abide by OAR 123-065-2500 to 123-065-2599.

(2) "Groups of persons" as used in ORS 285C.150(2) may comprise the general populace or labor force or any lesser number of persons that is not explicitly defined in terms of geography/residency.

(3) In order to effect and enforce compliance, the sponsor of an urban zone must include with its approval of an application for authorization written information that concisely lists and describes the specific additional conditions to which the firm commits, or to which it may be obligated under certain contingencies which must also be specified.

(4) The written information as described in section (3) of this rule shall appear in a standardized format that conforms to the policy that the zone sponsor has adopted for imposition of such additional conditions, and that is used for all eligible business firms authorized in that urban enterprise zone.

(5) Failure by a firm to satisfy such additional local conditions of an urban zone may affect the exemption in the following ways:

(a) Denial of the authorization under ORS 285C.140(2)(e), but only if the firm does not formally "commit" to meet the conditions;

(b) Refusal of initial qualification for exemption under ORS 285C.175; or

(c) Disqualification of an ongoing exemption in accordance with ORS 285C.240(1)(d), except as provided under ORS 285C.240(6).

(6) The county assessor has an obligation to effect actions described in subsection (5)(b) or (c) of this rule only insofar as the zone sponsor has provided timely and written notification of such failure.

(7) An eligible business firm shall have the same rights of appeal as provided elsewhere in ORS 285C.050 to 285C.250 for authorization and receipt of the enterprise zone exemption.

(8) The policy and standards adopted by the sponsor affect only proposed investments for which the eligible business firm applies for authorization after the date of adoption.

(9) The additional conditions may be imposed only pursuant to a policy and standards, such that:

(a) The policy entails the adoption by the zone sponsor of formal documentation outlining the sponsor's purposes, process, factors of consideration and so forth; and

(b) The policy contains standards consisting of established and transparent measures, methods or criteria to implement the policy and define the conditions, as well as specific consequences for the firm's failure to satisfy those conditions.

(10) Any imposed additional condition must relate in some way to employment opportunities for one or more groups of persons, through:

(a) Actions by the eligible business firm;

(b) Use of funds or resources from the firm;

(c) Other efforts supported by the firm; or

(d) Other means, for which the result is employment-related benefits for groups of persons, consistent with 47 OTR 557 (TC 4167, 1999).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.660(1)

Stats. Implemented: ORS 285C.150

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0240

Enhanced Public Services and Other Local Incentives

For purposes of local incentives inside an enterprise zone within an applicable city or county jurisdiction under ORS 285C.105(1)(b):

(1) Such local incentives include but are not limited to:

(a) Enhanced availability or efficiency of local public services, such as utilities, transportation access and public safety protection;

(b) Waivers, discounts or credits for local fees, charges, business/license taxes and so forth; or

(c) Regulatory flexibility, expedited/simplified permitting, special zoning designations, exceptions from ordinances, or the like that do not significantly undermine regulations pertaining to health & safety.

(2) Unless described as discretionary, any such incentive is binding on the city or county sponsoring the zone and must be implemented and made available no later than six months after the effective date of the designation or boundary change, as proposed in the resolution by which the city or county:

(a) Applies for designation of the zone, as described in OAR 123-065-1520(5); or

(b) Requests to be added as a cosponsor of the zone in conjunction with a request to change the boundary of the zone under ORS 285C.115(7).

(3) Within six months of the relevant effective date in section (2) of this rule, a city or county may formally declare and implement one or more such incentives that are in addition to and, if so indicated in the declaration, are as binding on the city or county for the life of the zone as previously proposed incentives.

(4) Except as provided in section (5) of this rule, any such incentive shall be available or provided to no fewer than all authorized business firms that qualify under ORS 285C.200 on an equal basis within that portion of the enterprise zone exclusive to the relevant jurisdiction.

(5) A Sponsoring Government or cosponsor may formally differentiate the incentives available to business firms operated as a hotel, motel or destination resort (if eligible in that part of the zone).

(6) For purposes of ORS 285C.245(5), in the case where the zone sponsor proposes one or more new incentives to replace an incentive or incentives that are binding according to this rule:

(a) "Comparable value" means that the new incentives or incentives, as a whole, shall be measured relative to what they would collectively replace, in terms of not only direct financial benefits to business firms, but also non-dollar factors such as convenience.

(b) In determining whether "reasonable corrections of shortcomings in existing local incentives" are being made, the Department may consider and take into account the extent to which an existing incentive significantly impairs or is reasonably expected to jeopardize the ability to provide services and incentives to eligible business firms in general, because it excessively:

(A) Benefits some or all authorized or qualified firms; or

(B) Strains local budgetary resources or utility capacity.

(7) That such an incentive is generally used by and available to other business firms within the enterprise zone or elsewhere in the jurisdiction does not affect its status as binding for purposes of the zone.

(8) A local incentive offered or binding in one cosponsor's jurisdiction has no bearing on the incentives of any other sponsoring jurisdiction.

(9) In accordance with applicable state or local laws, charters, ordinances or conventions, a city or county that sponsors an enterprise zone may offer to authorized or qualified business firms other incentives that are not binding, although the Department shall not formally recognize such discretionary incentives in the context of:

(a) Benefits customarily offered to an eligible business firm investing in the enterprise zone for purposes of marketing and related efforts to retain, expand, start or recruit such firms; and

(b) Awarding points for competitive criteria that may influence designation of the proposed zone (OAR 123-065-1570).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.660(1)

Stats. Implemented: ORS 285C.065, 285C.105, 285C.115 & 285C.245

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0255

Locally Available, Public Real Estate

For purposes of ORS 285C.105(1)(g) and 285C.110, the zone sponsor shall:

(1) Prepare and maintain a list and map of land, buildings and structures within the zone that are:

(a) Owned by any agency on behalf of the state government or by a municipal corporation;

(b) Not used or designated for some public purpose; and

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(c) Suitable for an eligible business firm in terms of land use zoning ordinances.

(2) Undertake reasonable efforts to make the real estate identified in section (1) of this rule available for lease or purchase by authorized or qualified business firms.

(3) Except as otherwise precluded under Oregon or federal law/constitutional provisions, such firms are entitled to acquire the real estate identified in section (1) of this rule at a fair market rate/price, subject to the leasing or purchasing firm's prompt development or redevelopment of the property pursuant to the application of authorization.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.065(3)
Stats. Implemented: ORS 285C.105 & 285C.110
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0300

Definitions

"Original enterprise zone" as used in ORS 285C.115(2) means the area within the boundary of the zone at the time when it was most recently designated.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.115
Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0310

Request by Sponsoring Jurisdictions

The request by the sponsor of an enterprise zone for a change to the zone boundary under ORS 285C.115 must provide a summary (memo) and documents that include or address each of the following:

(1) Resolutions lately adopted by the governing body of each of the sponsor's existing and proposed jurisdictions.

(2) Change or retention of the zone's official name.

(3) Definition of enterprise zone boundary in accordance with OAR 123-065-1000.

(4) Consideration of economic hardship conditions in or near any area to be added to the zone, relative to economic hardship for the original enterprise zone and local areas associated with it, consistent with OAR 123-065-0365.

(5) Adherence to OAR 123-065-0320 and 123-065-0330, including but not limited to commentary about the following:

(a) Usability of land to be added or removed;

(b) Location of new areas to be added respective to urban growth boundaries; and

(c) Actions and documentation of appropriate or necessary public involvement.

(6) Conformity with:

(a) Mandatory city/county sponsorship as described in OAR 123-065-0010;

(b) Spatial parameters for an enterprise zone, as delineated in OAR 123-065-0080 or 123-065-0090; and

(c) Requirements of ORS 285C.115(2)(b) and (d) for retaining:

(A) Sites of all current, actively authorized business firms; and

(B) At least half of the land originally in the zone.

(7) For any proposed new cosponsor, as desired:

(a) Binding proposals in its resolution to provide local incentives under ORS 285C.115(7)(a) (consistent with OAR 123-065-0240) to authorized or qualified business firms locating or expanding in parts of the proposed zone exclusive to that jurisdiction; or

(b) Restriction under ORS 285C.115(7)(b) from hotel, motel or destination resort businesses being eligible in the enterprise zone exclusive to that jurisdiction (but only if such businesses are eligible elsewhere in the existing zone under ORS 285C.070 or section 56(1), chapter 662, Oregon Laws 2003), as confirmed in all adopted resolutions.

(8) Request for a needed waiver of maximum rural distances per OAR 123-065-0090(4).

(9) Explain, as appropriate, why the change to the zone boundary complements the zone's Strategic Plan or marketing efforts as formulated in or since the application for designation of the zone.

(10) Describe any immediate justification, as appropriate, for the change to the zone boundary, including but not limited to one or more of the following:

(a) The ability to immediately site and authorize a prospective investment by an eligible business firm that will result in:

(A) Significant new employment;

(B) Preservation of local full-time jobs that would otherwise be lost;

(C) Notable worker compensation levels;

(D) Valuable new training opportunities for local workers; or

(E) Diversification of the local economy;

(b) The opportunity to exploit recent changes in local land use designations and ordinances consistent with the purpose of an enterprise zone under ORS 285C.050 to 285C.250;

(c) The extension of enterprise zone benefits to a city that is not sponsoring a current enterprise zone; or

(d) Other compelling reasons of the zone sponsor.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.115(6)

Stats. Implemented: ORS 285C.060 & 285C.115

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1996, f. & cert. ef. 6-24-96; EDD 1-997, f. & cert. ef. 1-17-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0320

Limitations on Boundary Changes

Approval by the Director or the Director's designee of a change in an enterprise zone's boundary as requested by the zone sponsor is restricted as follows:

(1) A boundary change may be approved, only if land as described in section (2) of this rule is represented by:

(a) Not less than 20 percent of the land to be added (except as specially allowed by the Department); and

(b) None of what is to be removed.

(2) Useable land for purposes of section (1) of this rule (which does not include residential or agricultural property) is as follows:

(a) Zoned outright for uses as would apply generally to eligible business firms consistent with an acknowledged comprehensive land use plan;

(b) Free of serious impediments to development and use by eligible business firms, due to cultural or environmental concerns/regulations;

(c) Provided with or can be effectively provided with infrastructure, road access, utilities and public services that are adequate for eligible business operations; and

(d) Vacant or available for substantial new occupancy, expansions or improvements by eligible business firms.

(3) In order for the boundary of a nonurban enterprise zone to be modified, such that it contains new or expanded areas outside of any urban growth boundary, the request for the boundary change must indicate and explain as described in OAR 123-065-0310(10) to the satisfaction of the Department that there is significant justification for the change.

(4) A boundary change shall not be approved if:

(a) It adds any area that is:

(A) Outside a regional or metropolitan urban growth boundary, to an urban enterprise zone; or

(B) Inside such a boundary, to a nonurban zone;

(b) It adds area within another current enterprise zone; or

(c) A new cosponsor to be added under ORS 285C.115(7) is a city that had sponsored an enterprise zone that terminated under ORS 285C.245(4) or (5).

(5) Neither a boundary change nor any comparable procedure allows a city or county jurisdiction:

(a) To make hotel/resort businesses eligible unless such firms are otherwise eligible in the zone already; or

(b) To renounce, rescind or terminate its existing sponsorship and inclusion in the zone, which is possible only by termination of the entire zone or by disincorporation of the jurisdiction.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.668(1) & 285B.680(5)

Stats. Implemented: ORS 285B.680

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0330

Public Involvement

In order for a requested change to an enterprise zone's boundary to be approved, the zone sponsor must solicit public involvement that:

(1) Occurs prior to the approval of resolutions as described in OAR 123-065-0310(1) or prior to the submission of a revised request for the boundary change under ORS 285C.115(8);

(2) Is commensurate with the scale and potential impact of the requested boundary change on members of the public, subject to the sponsor's judgment and a case-specific review by the Department, which shall recognize, for example, that a minor addition of land within an urban growth boundary will generally necessitate little or no public involvement;

(3) Potentially includes but is not necessarily dependent on such activities as: Public notice, period of public comment, dissemination of information or public meeting/hearing; and

(4) Conforms with and includes documentation stipulated in OAR 123-065-1050, if the boundary change will add area to the enterprise zone within a property tax code area currently outside the zone.

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Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.115(6)
Stats. Implemented: ORS 285C.115
Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1996, f. & cert. ef. 6-24-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0350

Special Cases

(1) If modifications in local, state or federal designations cause a nonurban enterprise zone to be intersected by a previously existing regional or metropolitan urban growth boundary, then no request for a change to the boundary of that nonurban enterprise zone may be approved that adds areas within the regional or metropolitan urban growth boundary as it existed prior to any such intersection of the zone.

(2) If a city annexes into its jurisdiction an area of an enterprise zone, of which the city is not a sponsor, or to which the city did not consent under ORS 285C.065(1):

(a) The tax exemptions of authorized or qualified business firms in the annexed area shall not be affected;

(b) An eligible business firm proposing an investment in qualified property at a location in the annexed area of the zone may be authorized contingent on an amendment to the zone's sponsorship as provided in subsection (c) of this section; and

(c) An eligible business firm authorized consistent with subsection (b) of this section may not qualify nor receive an enterprise zone exemption for the investment unless and until such time as the Director or the Director's designee approves a request by resolutions of the zone sponsor and the city, such that either:

(A) The city becomes a new cosponsor of the zone under ORS 285C.115(7); or

(B) The city consents consistent with ORS 285C.065(1) that the zone may contain any area within the city's jurisdiction.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.115
Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0365

Economic Conditions

Under ORS 285C.115(2)(c), an area may not be added to an enterprise zone if it contains or adjoins residential areas that are significantly better-off, economically, compared to the original area of the enterprise zone, such that:

(1) Economic statistics for the original enterprise zone may be based on data:

(a) From the time of the application for designation of the zone; or

(b) As are most recently available.

(2) For purposes of the boundary change request and OAR 123-065-0310(4), this issue may be dealt with though general commentary if it is readily apparent that areas to be added to the zone:

(a) Are virtually devoid of and geographically removed from residential areas; or

(b) Have/border only residential areas with more severe economic hardship conditions.

(3) If the case for subsection (2) cannot be so plainly made, then the request shall contain a suitable comparison of the original zone's economics to Census Statistical Units that contain, overlap and/or are adjacent to areas to be added to the zone.

(4) The comparison in section (3) of this rule must show that such Census Statistical Units, based on the most recently available data, are:

(a) Less than 25 percent zoned for residential use; or

(b) Have generally the same or a lower/higher level/rate of household or personal income/poverty, or alternatively a higher unemployment rate, compared to the original zone.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.115
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1000

Defining the Zone Boundary

Any proposed enterprise zone designation or boundary change, as described in this division of administrative rules, shall demonstrate adherence with OAR 123-065-0080 or 123-065-0090 by including all of the following with the application or request that is submitted to the Department:

(1) Estimate to the nearest 0.1 square miles of the entire proposed enterprise zone area (pursuant to boundary change).

(2) Map or set of maps drawn to scale with a clear representation of the entire enterprise zone's proposed boundary, such that:

(a) Maps must contain north directional arrow, legend/scale and title with the name of the zone;

(b) An overview map showing the entire proposed zone boundary is always required;

(c) As necessary, inset or sub-maps are used to adequately show detail for portions of the zone, as referenced or linked to the overview map; and

(d) In the case of a boundary change, separate mapping of areas to be specifically added or removed is mandatory.

(3) Narrative legal description of the enterprise zone's boundary in a continuous fashion corresponding to the overview map in section (2) of this rule (with separate descriptions for areas being added or removed by a boundary change). Although it is principally based on metes & bounds surveying, for the sake of simplification, one or more of the following may substitute for some or all of the metes & bounds, where it exactly corresponds or coincides to the enterprise zone boundary:

(a) Permanent landmarks or natural margins such as a waterway, road, track or transmission line;

(b) Official borders or demarcations such as city limit, urban growth boundary, county line or right of way, provided that dated documentary references are made (zone boundary will not automatically change with later changes to these demarcations);

(c) Census Statistical Units larger than a census block (with official, dated documentation);

(d) Whole cadastral sections, quarter sections and so forth (with official, dated documentation); or

(e) Tax lots as dated and documented through the county assessor's office in association with maps used for section (2) of this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) & 285C.250(4)
Stats. Implemented: ORS 285C.060, 285C.065, 285C.075, 285C.085, 285C.090, 285C.115, 285C.120 & 285C.250
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1050

Notice to Local Taxing Districts

To implement OAR 123-065-0330(4), 123-065-1530(5), 123-065-1720(1) and 123-065-8200(1), a proposed designation or change in an enterprise zone boundary shall entail prior notice to local taxing districts, as follows:

(1) The Applicant or zone sponsor must send the notice to each taxing district (including but not limited to municipal corporations or service districts listed under ORS 198.010 and 198.180) that would be newly affected, because the proposed zone designation or boundary change contains a tax code area, from which the taxing district receives operating revenue through ad valorem taxes levied on real and personal property therein, with the following exceptions:

(a) A city or county government applying for or sponsoring the zone; or

(b) A service district, urban renewal district, or the like entirely within or commensurate to such a city or county jurisdiction and with a governing body equivalent to that of the city or county.

(2) The Applicant or zone sponsor must furnish the Department with the following as part of the application or boundary change request:

(a) A list of contact names and mailing addresses for all applicable taxing districts;

(b) A copy of the notification directed at such taxing districts; and

(c) A statement signed by the authorized preparer of the application or request attesting that the notification was sent by regular mail to each listed district on a specified date, at least 21 calendar days before:

(A) The adoption of the requisite resolution by the governing body of the applicant/sponsoring county; or

(B) In the absence of a county applicant/sponsor, then before the adoption of a requisite resolution by an applicant/sponsoring city.

(3) The notice shall do all of the following:

(a) Describe the probable schedule for consideration of city/county resolutions to apply for designation or to request the boundary change;

(b) Explain the limited-duration exemption(s) from property taxes available on certain property newly invested by particular, job-creating businesses;

(c) Invite comments on the proposed zone or boundary change, to be directed at some or all of the sponsoring city/county governments; and

(d) Give contact details for submitting such comments or for receiving further information.

(4) The Applicant or zone sponsor shall submit copies of all written comments in response to the notice, from any relevant taxing district, to the Department no later than 30 calendar days following receipt of the com-

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ments (or any specified application deadline), and if possible, before the Director orders the designation or boundary change.

(5) The zone sponsor shall give due consideration to any comment received in relationship to this rule.

(6) A taxing district's objection or lack of support for the proposed zone designation or boundary change does not constitute or allow any effective exclusion or alteration of relevant exemptions on taxable property, as is provided by law for other types of programs involving comparable exemptions.

(7) Failure to materially perform any task stipulated by this rule may result in the Department rescinding and reversing a relevant order of designation or boundary change, including termination of the enterprise (or rural renewable energy development) zone, consistent with ORS 285C.245(5).

(8) The tasks stipulated in this rule are in no way intended to discourage or replace other local efforts and actions to provide/ elicit public information, commentary or involvement, as circumstantially appropriate, or as required by local law, policy, custom or practice.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.250(4), 285C.353(2) & 285C.370

Stats. Implemented: ORS 285C.060, 285C.065, 285C.075, 285C.085, 285C.090, 285C.115, 285C.120, 285C.250 & 285C.353

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1500

Definitions

In addition to terms defined in OAR 123-065-0000, the following definitions apply to applications for designation of an enterprise zone (OAR 123-065-1500 to 123-065-1599):

(1) "Basis Point" equals one one-hundredth of a unit of a percentage rate or 1 percent of a Percentage Point.

(2) "Enterprise Zone Population" means:

(a) For nonurban enterprise zones, the total population of incorporated cities in which any part of the zone is located, plus the estimated population of unincorporated territory that is within the boundary of the zone; or

(b) For urban enterprise zones, the estimated population within the boundaries of the zone, plus the estimated population of any Target Community that is used for purposes of OAR 123-065-1630.

(3) "Percentage Point" equals one unit of a percentage rate. (For example, an 8.5-percent unemployment rate is two Percentage Points higher than a 6.5-percent unemployment rate)

(4) "Round of Designation" is defined as the period of time, not less than 90 days, beginning when one set of enterprise zones is designated, and ending when the next set of zones is designated.

(5) "Strategic Plan" or "Strategic Planning" means any documentation or descriptions, as submitted with an application for designation of an enterprise zone, as described in OAR 123-065-1650.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) & 285C.250(4)

Stats. Implemented: ORS 285C.065, 285C.075 & 285C.250

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1510

Mandatory Economic Need and Land

For purposes of designation, a proposed enterprise zone must demonstrate that the local economy is lagging, and that it contains land ready for development, such that:

(1) Except as allowed in section (2) of this rule, a proposed enterprise zone must meet one of the following relative measures of economic hardship in order to qualify for designation (see OAR 123-065-1600 to 123-065-1620):

(a) The proposed enterprise zone's median income per household or mean income per capita is 80 percent or less of the equivalent statewide income;

(b) The proposed enterprise zone's unemployment rate is at least two Percentage Points higher than the statewide unemployment rate;

(c) The proposed enterprise zone's percentage of persons or households below the poverty level is at least five Percentage Points higher than the equivalent statewide percentage; or

(d) The change in Enterprise Zone Population during the most recent ten-year period is at least 15 Percentage Points less than the baseline growth for the statewide population. (For example, if the Enterprise Zone Population grew by 1 percent, but the state's population growth over the same ten-year period was 16 percent, the proposed enterprise zone would meet this qualification)

(2) A proposed enterprise zone that does not meet one of the comparative measures of economic hardship in section (1) of this rule may still qualify for designation, if one of the following alternative qualifications is satisfied:

(a) The Director or designee determines based on evidence, arguments and cases succinctly presented and documented by the Applicant, including but not limited to a combination of recently available facts and data for social and economic conditions, that the proposed enterprise zone would effectively serve communities with economic needs at least as severe as what is represented in section (1) of this rule and ORS 285C.090(1);

(b) The proposed enterprise zone is located predominantly within a distressed area or areas, as identified by the Department at the time of the zone application, as described in division 024 of this chapter of administrative rules; or

(c) Permanent closures or curtailments within 30 miles of the proposed enterprise zone that have been effected or announced by specified employers during the three years preceding the application deadline are associated with job losses equal to at least 2 percent of the average annual covered employment, as most recently reported by the Employment Department, for the county or counties in which the lost jobs are located.

(3) The proposed enterprise zone boundary must encompass significant land that is vacant, improvable and suitable for use and rapid development by eligible business firms, including but not limited to sites as described in OAR 123-065-1670 that consist of at least:

(a) A certain amount of total acres or two sites of certain minimum size, as specified by the application form in OAR 123-065-1530, for the proposed type of zone; or

(b) Such total/contiguous acreage as the Director or designee may determine to be equivalent to subsection (a) of this section in a particular case.

(4) No part of this rule shall be construed to exclude enterprise zones so designated or amended under federal law or under ORS 285C.085, 285C.115 or 285C.306.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) & 285C.250(4)

Stats. Implemented: ORS 285A.095, 285B.283, 285C.075, 285C.090 & 285C.250

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1520

Enterprise Zone Application

The application for designation of an enterprise zone:

(1) Shall be accepted by the Department only if submitted pursuant to an announced Round of Designation, and if on or before the date of the application deadline specified by OAR 123-065-1550(1):

(a) It is sent, as indicated by a postmark or the receipt of a commercial deliverer; or

(b) It is received at the Department's Salem office by 5 p.m. that day if directly delivered by the Applicant.

(2) Shall include all items and information specified in OAR 123-065-1530.

(3) Shall be accepted by the Department from any city or county or combination of cities or counties in accordance with OAR 123-065-0010, except that:

(a) A city may be a Sponsoring Government for only one application per Round of Designation;

(b) A city with less than 100,000 population may not be a Sponsoring Government, if it is a sponsor of a current enterprise zone, unless that current enterprise zone is to be Terminated by Statute at the conclusion of the Round of Designation; and

(c) An Applicant is not eligible, if it includes a majority of the cities or of the cities and counties that had sponsored an enterprise zone that was terminated by order of the Director under ORS 285C.245(4) or (5).

(4) Shall specify a name for the proposed zone corresponding to common geographic or jurisdictional terms. (For entirely official purposes, a Preexisting Enterprise Zone using the same name would use the suffix "II")

(5) May contain binding proposals by each Sponsoring Government (as indicated in its resolution) to provide local incentives under ORS 285C.065(4) to (6) (consistent with OAR 123-065-0240) to authorized or qualified business firms locating or expanding in parts of the proposed zone exclusive to that jurisdiction.

(6) Serves as an opportunity for a Preexisting Enterprise Zone to revise any existing policy.

(7) Is the only chance to establish whether a business operating a hotel, motel or destination resort will be eligible under ORS 285C.135(5)(c) in the newly designated enterprise zone, and whether this eligibility pertains only to some parts of the zone exclusive to the jurisdiction of one or more Sponsoring Governments, under ORS 285C.070, such that:

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(a) Any such election or restriction may be made only by resolution(s) (jointly) adopted by the Sponsoring Government(s).

(b) An election, restriction or lack thereof may be revised, regardless of what is indicated with the application, by resolution(s) (jointly) adopted up to but not more than six months after the date of designation.

(c) For a Preexisting Enterprise Zone with an existing election under ORS 285C.070 or section 56(1), chapter 662, Oregon Laws 2003, hotel/resort eligibility will NOT automatically carry over (causing future hotel/resorts to be ineligible throughout the new zone, unless a positive election is made with or after the application as described in this section).

(d) Any restriction of hotel/resort eligibility must be consistently provided for by resolution of all Sponsoring Governments.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.250(4)

Stats. Implemented: ORS 285C.065, 285C.070, 285C.075 & 285C.250

Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 10-1995, f. & cert. ef. 12-19-95; EDD 1-1997, f. & cert. ef. 1-7-97; Renumbered from 123-065-0020; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1530

Required Elements of Application

An application proposing designation of an enterprise zone must contain:

(1) A form as prescribed by and available from the Department that the Applicant fills out and includes with the information described in this rule, notwithstanding other information that the Applicant wishes to submit.

(2) A resolution proposing the enterprise zone designation, in accordance with OAR 123-065-1540:

(a) From each Sponsoring Government (or a resolution of consent from any applicable jurisdiction as described in OAR 123-065-0010);

(b) That is approved by a majority of the jurisdiction's governing board as specified in the county or city charter, not more than 90 days prior to when the application is sent or submitted to the Department for that Round of Designation; and

(c) Such that for purposes of subsection (a) of this section, the governing body of a special jurisdiction may substitute for a city or county, if the membership of the governing body is identical to that of the city or county, and the special jurisdiction comprises the entirety of the area inside the proposed enterprise zone that is also within the city's corporate limits or the county's unincorporated territory.

(3) A description of the boundary and surface area of the proposed zone as described in OAR 123-065-1000.

(4) Information sufficient to verify satisfaction of the mandatory qualifications described in OAR 123-065-1510 by including:

(a) Data for social and economic conditions as described in OAR 123-065-1600 to 123-065-1630, which also serve the competitive criteria in OAR 123-065-1560; and

(b) Evidence about the readiness of land for development, including but not limited to an enterprise zone map highlighting critical sites and other materials consistent with OAR 123-065-1670.

(5) The documentation as stipulated in OAR 123-065-1050.

(6) Failure to have adequately or accurately performed the tasks described in this rule may result in the termination of the proposed enterprise zone after it has been designated, consistent with ORS 285C.245(5).

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.250(4)

Stats. Implemented: ORS 285C.065, 285C.075, 285C.090 & 285C.250

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 5-1999(Temp), f. & cert. ef. 8-20-99 thru 10-23-99; EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1540

Local Resolutions Requesting Designation

The resolutions of Sponsoring Governments for purposes of OAR 123-065-1530(2), as a required part of the application for designation of an enterprise zone, shall:

(1) State the Applicant's principal reasons for an enterprise zone, as appropriate.

(2) Acknowledge other participants in a joint application, if any.

(3) Confirm that the Applicant will give priority to the use in a designated zone of any economic development or job training funds received directly or indirectly from the federal government.

(4) Declare that the Applicant will fulfill its duties under ORS 285C.050 to 285C.250 and comply with ORS 285C.105, as described in this division of administrative rules, if the proposed zone is designated, including but not limited to a commitment to:

(a) Appoint a local zone manager within 90 days of designation, if one is not already appointed through the application; and

(b) Fully implement within six months of designation:

(A) Any proposal in the application for local incentives under ORS 285C.065(4) to (6) (consistent with OAR 123-065-0240); and

(B) Duties of the sponsor as described in OAR 123-065-0210 and 123-065-0255.

(5) Attend to actions taken for purposes of public involvement and OAR 123-065-1530(5).

(6) Highlight other characteristics of the application or the proposed zone as deemed appropriate by the Sponsoring Government.

(7) Address applicable elections or restrictions for hotel/resort eligibility (see OAR 123-065-1520), electronic commerce designations, or similar matters.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.095(1) & 285C.250(4)

Stats. Implemented: ORS 285C.065, 285C.070, 285C.095, 285C.105 & 285C.110

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 5-1999(Temp), f. & cert. ef. 8-20-99 thru 10-23-99; EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1550

Application Receipt and Review

(1) The Department shall issue notice specifying the deadline for applications and the minimum and maximum number of enterprise zones to be designated in a Round of Designation. Such notice shall be announced, communicated or published as the Department determines, including but not limited to being posted at the Department's internet web site, not less than 60 days in advance of the specified deadline.

(2) The Department shall complete a review of all received applications for enterprise zone designation within 60 days after the deadline specified in section (1) of this rule and determine which Applicants meet the requirements and mandatory qualifications under ORS 285C.090 and other applicable provisions of ORS 285C.050 to 285C.250, as described in OAR 123-065-1510 through 123-065-1540.

(3) When the number of qualified Applicants exceeds the maximum number of zones to be designated, or if requested by the Director, the Department shall evaluate the applications using the competitive criteria described in OAR 123-065-1560, 123-065-1570, 123-065-1580 and 123-065-1590, which each entail a category of criteria for evaluating and awarding points on the need, likelihood of success and other qualities of a proposed enterprise zone, such that:

(a) Total points for all of the categories and criteria shall not exceed 2,000.

(b) OAR 123-065-1560(1) to (5) carries a maximum of 750 points, and 123-065-1580 carries a maximum of 500 points.

(c) For each criterion without a definite formula, the Department shall assign points based on a comparison among the Applicants in that Round of Designation.

(d) No penalty shall be associated with either the response or the absence of a response to any criterion.

(e) If two or more Applicants have the same number of total points for all categories, then the tie may be broken by a method determined by the Director.

(f) The evaluation may include input/scoring by external reviewers (that are reasonably expected to be impartial) if justified by the number of qualified Applicants relative to available zones.

(4) In order to be accepted by the Department, all responses to such competitive criteria must be submitted at the time of the application as described in OAR 123-065-1520(1), except for those in OAR 123-065-1570, 123-065-1580 and 123-065-1590 if:

(a) So stipulated in those administrative rules for the particular criterion; or

(b) In the public notice in section (1) of this rule, the Department allows such responses to be submitted within 30 calendar days following the specified deadline. In this case, the Department shall give preliminary indication to all Applicants of the potential importance of such responses, as soon as possible after the deadline.

(5) Except as precluded by section (6) of this rule, the Department shall prepare a staff report to the Director that:

(a) Identifies and delineates basic features of each qualified Applicant;

(b) Summarizes the evaluations and rankings based on the competitive criteria described in this rule;

(c) Discusses other significant analyses and considerations about the proposed enterprise zones, as available; and

(d) Highlights key issues and parameters affecting the current Round of Designation.

(6) When the number of qualified Applicants is less than the minimum number of zones to be designated, as specified in the public notice in

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section (1) of this rule, the Round of Designation is canceled, and a new Round of Designation may begin immediately.

(7) The Department shall contact all unsuccessful Applicants within 30 days of the Director's determination in OAR 123-065-1553, notifying them in writing of why their applications was unqualified or denied.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) 285C.250(4)
Stats. Implemented: ORS 285C.065, 285C.075, 285C.090 & 285C.250
Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 10-1995, f. & cert. ef. 12-19-95; EDD 1-1997, f. & cert. ef. 1-7-97; Renumbered from 123-065-0030; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 5-1999(Temp), f. & cert. ef. 8-20-99 thru 10-23-99; EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1553

Director's Determination

For purposes of designating enterprise zones:

(1) After receiving the staff report indicated in OAR 123-065-1550, the Director shall initiate appropriate deliberations and steps to make one or more designation.

(2) The Director shall take the results of the Department's review as contained in the staff report under advisement, but in reaching a final decision the Director may also:

(a) Give special weight to particular matters addressed in the applications;

(b) Assess data or input from other sources;

(c) Consult with any party, inside or outside state government, with potentially useful information; or

(d) Engage in similar forms of consideration.

(3) For a given Round of Designation:

(a) All zones available for designation under ORS 285C.250(1) to replace zones that are Terminated by Statute shall be designated insofar as there are qualified Applicants;

(b) The Director may determine not to designate a zone available under another provision, despite qualified Applicants (beyond any minimum number of designations if so specified in the public notice); and

(c) Any zone remaining undesignated shall be made available in a future Round of Designation to be determined by the Director.

(4) No enterprise zone shall be designated if any such designation would cause the total number of enterprise zones in existence to exceed the maximum number as described in OAR 123-065-0049.

(5) The decision of the Director as to which qualified Applicant(s) to designate (or deny):

(a) May not be appealed; and

(b) Depends ultimately (subject to sections (1) to (4) of this rule) on the Director's determination of which Applicant/proposed enterprise zone represents the best chance to fulfill the public purposes of the Enterprise Zone Act if designated.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.250(4)
Stats. Implemented: ORS 285C.055, 285C.060, 285C.075, 285C.080, 285C.250 & 285C.260
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1557

Orders of Designation

Pursuant to OAR 123-065-1553:

(1) The Director shall issue an order designating the enterprise zone or zones.

(2) The Director's order of designation shall acknowledge:

(a) The particular statutory basis for the designation;

(b) The basic features of the new enterprise zone, such as its Sponsoring Government(s) and supporting documentation describing the zone's area;

(c) The effective designation date and the latest expected termination date for the new enterprise zone;

(d) If applicable, that the new zone is the continuation of a Preexisting Enterprise Zone; and

(e) That the new enterprise zone shall exempt qualified property of hotels, motels and destination resorts, as allowed under ORS 285C.070, and any other similarly special status.

(3) An order of designation shall typically set the effective date of designation on the date when the order is actually done, but it may be made effective at a reasonable time later or earlier, including but not limited to the following cases:

(a) Designation of any zone available under ORS 285C.250(1) to replace a zone Terminated by Statute shall take effect on July 1.

(b) For a zone available under another provision, the effective designation date may be made earlier to accommodate qualification of an investment in qualified property by an eligible business firm in the newly designated zone, with the following provisos:

(A) The effective date may not be earlier than when the formal application for designation was first received from the Applicant;

(B) Nothing by the Department in such regards shall be construed as ensuring any benefit for the firm, including but not limited to exemption on taxable property under ORS 285C.175;

(C) The investment must be clearly indicated in the application for designation, as a consideration for designation of the proposed enterprise zone;

(D) The merit of this investment shall be given consideration by the Department and Director only as commensurate with that given to any other prospective investment contained in competing applications; and

(E) The firm still needs to have applied for authorization under ORS 285C.140 before beginning physical work on the investment, but approval of the authorization application shall wait until the zone is designated, if that actually happens.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.055, 285C.060, 285C.070, 285C.075, 285C.250
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1560

Competitive Criteria: Economic Hardship and Betterment

The following criteria measure the economic hardship of the proposed enterprise zone, and a response to one of the following sections is required by OAR 123-065-1510(1) or (2), but additional responses may be made at the Applicant's discretion by the deadline in OAR 123-065-1550(1):

(1) Ten points shall be awarded for every percent that the average/median per capita or per household income of the zone is below the equivalent statewide income.

(2) One point for every Basis Point by which the zone's unemployment rate exceeds the statewide rate.

(3) Four points shall be awarded for every 10 Basis Points by which the zone's percentage of persons or households below the poverty level exceeds the equivalent statewide percentage.

(4) Four points shall be awarded for every 30 Basis Points by which the baseline population growth of the state during the most recent ten-year period exceeds the change in the Enterprise Zone Population over the same ten-year period.

(5) Sixty points shall be awarded for each distressed area (as described in division 024 of this chapter of administrative rules) that either is a Sponsoring Government, or is entirely contained within the boundary of the proposed zone.

(6) Points may be awarded at the discretion of the Department for:

(a) Other economic statistics or circumstances, such as local closures and job losses or special studies of overall economic conditions, as presented and documented by the Applicant; or

(b) If the Department finds that designation of the proposed zone is likely to contribute significantly to opportunities for growth in an economically lagging region of the state.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.250(4)
Stats. Implemented: ORS 285A.095, 285C.055, 285C.075, 285C.090, 285C.250
Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 10-1995, f. & cert. ef. 12-1-95; EDD 1-1997, f. & cert. ef. 1-7-97; Renumbered from 123-065-0040; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1570

Competitive Criteria: Successful and Sound Development

The following criteria evaluate the proposed enterprise zone's potential to induce additional investment by eligible business firms and thereby stimulate local economic opportunity through new jobs, wealth and business diversity, and to otherwise integrate the enterprise zone into efforts to create and sustain a healthy community. Responses may be made at the Applicant's discretion and may consolidate two or more of the following criteria:

(1) Available or planned education and training opportunities, as well as career/personal counseling, job placement or similar services, for eligible employers and employees that:

(a) Could influence eligible business firms to locate, start up, expand or remain in the proposed enterprise zone; or

(b) Are capable of enhancing skill levels, productivity and earnings for the eligible employers and employees located in the proposed enterprise zone.

(2) History of economic and community development activities on the part of the Applicant or other jurisdictions and groups that would play an active role in promoting the proposed enterprise zone (maximum 150 points). For Preexisting Enterprise Zones:

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(a) One point shall be awarded under this section for each of the first 150 jobs created by qualified business firms within the terminated or terminating zone since its most recent designation; and

(b) The Department shall determine the most recent figures for the jobs created and associated with such a zone based on information reported by the county assessor under ORS 285C.130, subject to revision through communications of the Department with qualified business firms or the assessor. (This subsection relieves a relevant Applicant of having to report job figures in its enterprise zone application)

(3) Recent or planned improvements in the availability, capacity or efficiency of public infrastructure that generally facilitate business development in the proposed zone.

(4) Proposed package of local incentives as described in OAR 123-065-0240, such that:

(a) Elements of local incentives adopted within one year prior to the application deadline may be included in this package; and

(b) Applicants shall consider and comment on the fiscal or other impact to all relevant governmental entities of proposed reductions in direct service fees.

(5) A plan for marketing the proposed enterprise zone or the local area with respect to the expansion, retention, start-up or recruitment of eligible business firms.

(6) A Strategic Plan or similar efforts applicable to the proposed enterprise zone, in terms of local analyses, objectives, actions and anticipated results consistent with OAR 123-065-1650.

(7) General supply of land that is useable for eligible business firms in general, including but not limited to sites ready for rapid development or redevelopment inside the proposed enterprise zone consistent with OAR 123-065-1670.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) 285C.250(4)
Stats. Implemented: ORS 285B.283, 285C.055, 285C.060, 285C.065, 285C.075 & 285C.250
Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1580

Competitive Criteria: Immediate Investment Prospects

The following criteria assess the immediate investment prospects within the proposed enterprise zone by eligible business firms considering a location or an expansion in employment within the zone. Responses may be made at the discretion of the Applicant and such firms:

(1) Such immediate prospects must be offered by eligible business firms, as defined under ORS 285C.135, on investments reasonably expected to qualify within the proposed enterprise zone no later than January 1 following the second full calendar year after the zone is to be designated.

(2) Evidence of such prospects shall take the form of:

(a) An approved authorization application;

(b) A list of authorized business firms prepared by the Applicant; or

(c) A letter from an executive officer of the eligible business firm on its letterhead to the Director or designee, stating:

(A) That the enterprise zone designation weighs crucially in the firm's decision to locate or expand;

(B) Any specific sites that the firm is considering for its investment;

(C) The estimated number of new employees to be hired within the zone by the time that the firm's investment will qualify for the enterprise zone exemption; and

(D) The estimated cost of the investment in qualified property as defined under ORS 285C.180.

(3) One point shall be awarded for each new employee to be hired by such a prospect.

(4) Three points shall be awarded for each \$1,000,000 to be invested in qualified property by such a prospect.

(5) Relevant evidence for section (2) of this rule must be received by the Department within 30 calendar days of the application deadline specified in OAR 123-065-1550(1).

(6) An eligible business firm may submit only one letter as described in subsection (2)(c) of this rule for each Round of Designation. If the firm submits two or more letters no points shall be awarded, but a letter may be withdrawn and replaced with a new letter, that is received by the Department within the time limit set out in section (5) of this rule.

(7) The Department shall award only 1/3 of the usual points as described in section (3) and (4) of this rule for an immediate investment prospect that plans to locate on a site inside an enterprise zone that terminated within three years prior to the application deadline or on a site within five miles of a current enterprise zone, unless the Applicant or the eligible business firm sufficiently justify why:

(a) The prospective investment cannot now qualify under ORS 285C.245(1) or any other provision of ORS 285C.050 to 285C.250, including allowances for changes in an existing enterprise zone boundary; or

(b) The designation of the enterprise zone is nevertheless indispensable to the firm's investment.

(8) If a final investment decision is made by the eligible business firm prior to the designation of the enterprise zone by the Director, no points shall be awarded for that investment. Evidence of such a decision includes but is not limited to a public announcement or action by the firm.

(9) The Department reserves the right to seek information on the creditworthiness and business credibility of the eligible business firm before awarding points under this section.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.250(4)

Stats. Implemented: ORS 285C.055, 285C.060, 285C.065 & 285C.250

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1590

Competitive Criteria: Miscellaneous

The following criteria characterize the likelihood that the proposed enterprise zone will function effectively and will achieve the economic development goals of the state as a whole. Responses may be made at the Applicant's discretion and may consolidate two or more criteria:

(1) A plan for managing the proposed zone, including but not limited to the appointment of a local enterprise zone manager or co-managers through provisions in the application or approved actions by the Sponsoring Governments.

(2) Existing or proposed arrangements for coordinating actions among the Sponsoring Governments, county assessor and other key participants in the proposed zone, including but not limited to the creation or naming of a Zone Association that is or will be empowered and constituted by resolutions/agreement among the Sponsoring Governments.

(3) Evidence of broad-based public awareness or support for the proposed zone by the local community, including but not limited to:

(a) A record of formal public discussion and involvement in the decisions to make application and to define the area for the zone; and

(b) Resolutions or letters of support for the zone from local organizations, institutions or property tax districts received by the Department within 30 calendar days of the application deadline specified in OAR 123-065-1550(1).

(4) For a proposed urban enterprise zone, the absence within the metropolitan statistical area of any other urban zone that will not be Terminated by Statute before the zone is designated (maximum of 150 points).

(5) The distance between a proposed nonurban enterprise zone and the nearest current enterprise zone that will not be Terminated by Statute before the zone is designated (2.5 points for every mile of the shortest distance over paved roadways, up to a maximum of 250 points).

(6) The Enterprise Zone Population for a proposed nonurban enterprise zone (one point for every 50 inhabitants, up to a maximum of 150 points).

(7) Number of cities or counties participating in the proposed zone (60 points for each Sponsoring Government in excess of two).

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) & 285C.250(4)

Stats. Implemented: ORS 285C.055, 285C.075, 285C.105 & 285C.250

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1600

Definitions

In addition to terms defined in OAR 123-065-0000 and 123-065-1500, the following definitions apply to OAR 123-065-1600 to 123-065-1699:

(1) "Magnet Enterprise Zone" means a nonurban enterprise zone that has:

(a) A Sponsoring Government that is the most populous city of the county or counties in which the zone is located; and

(b) An Enterprise Zone Population equal to or greater than 25 percent of the population of the county or one of the counties in which the zone is located.

(2) "Population" as used in ORS 285C.090 means the number of inhabitants as determined by the most recently available data from the federal Bureau of Census or the Center for Population Research and Census (CPRC) at Portland State University.

(3) "Poverty level" as used in ORS 285C.090 is as defined by the U.S. Bureau of Labor Statistics of the U.S. Department of Labor.

(4) "Regional academic institution" as used in ORS 285C.090 means a nonprofit or not-for-profit center or institute that is engaged in demo-

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graphic, economic, social or related studies and is associated with an accredited college or university, including but not limited to extension services offices.

(5) "Target Community" means an extensive residential area or group of such areas that:

- (a) Is proximate to the proposed enterprise zone boundary;
- (b) Dominates much of the proposed zone's immediate vicinity; and
- (c) Encompasses the populace that the proposed zone is intended by

the Applicant to help through employment opportunities or through relevant public or private activities that would make the Target Community economically stronger and more vital.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) 285C.250(4)
Stats. Implemented: ORS 285C.065, 285C.075, 285C.090 & 285C.250
Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1610

Sources of Statistical Measures

Data submitted pursuant to OAR 123-065-1510 and 123-065-1560, as part of an application for designation of an enterprise zone, shall adhere to the following guidelines, unless otherwise stipulated by the Department in its application form:

(1) Statistical measures must be based on annual data (not monthly or quarterly values) from an official source such as:

- (a) The federal decennial census;
- (b) Other federal agencies or sources;
- (c) State agencies such as the Employment Department;
- (d) Center for Population Research and Census (CPRC) at Portland State University;
- (e) Regional academic institutions;
- (f) Regional service centers or databases, which may include or be obtained from local planning offices, Council of Governments, or public, people's or municipal utilities;
- (g) Special studies contracted with and performed by any of the above; or
- (h) Published, official or peer-reviewed documents, reports or resources.

(2) No matter what source of data is chosen by an Applicant, the most recently available data from that particular source must be used.

(3) For any given statistical comparison, data for the proposed enterprise zone and data for the state must be of the same origin and cover the same year or years.

(4) In the application the Applicant shall:

- (a) Cite sources of data;
- (b) Provide bibliographic details; and
- (c) Identify by letter of the alphabet the appendix to the application in which the Applicant:

- (A) Inserts worksheets or analyses, as applicable;
- (B) Includes a copy of any special report that is used or referenced in the application; or
- (C) Inserts photocopies of the title page and any relevant sections, charts or tables from an official source document, as applicable. (Properly labeled tables that consolidate isolated data from various pages of the same document may be substituted for copies of those pages)

(5) Nothing in this rule is meant to restrict an Applicant's ability to employ private, for-profit consultants, except that all analyses, estimates or conclusions by such consultants must be independently and plainly corroborated through official data.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) & 285C.250(4)
Stats. Implemented: ORS 285C.065, 285C.075, 285C.090 & 285C.250
Hist.: EDD 10-1995, f. & cert. ef. 12-19-95; EDD 1-1997, f. & cert. ef. 1-7-97; Renumbered from 123-065-0070; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1620

Correlation with Proposed Zone

For purposes of OAR 123-065-1510, 123-065-1560 and 123-065-1610:

(1) The Applicant of any proposed enterprise zone that is located entirely within a metropolitan statistical area may use equivalent data for the metropolitan statistical area instead of statewide data, regardless of whether the equivalent data represents only the in-state portion of the metropolitan statistical area.

(2) Unless otherwise stipulated, economic measures and statistics for a proposed enterprise zone may be based entirely on:

- (a) Zone-specific data, in that the figures approximate economic conditions within the proposed boundaries and the immediate vicinity of the zone;

(b) Citywide data that is averaged and weighted by city population, but only if no less than 75 percent of the inhabitants residing within the proposed boundaries of the zone also reside inside the incorporated area of the same city or cities;

(c) Countywide data, but only if the zone is a Magnet Enterprise Zone; or

(d) Metropolitan statistical area data, but only for a proposed urban zone.

(3) An Applicant proposing an enterprise zone designation may exercise the following latitude in developing zone-specific economic measures based on or derived from published income, employment, population and other data for Census Statistical Units:

(a) Special studies or documented analyses may be used to estimate or infer the actual population, employment or income levels for the relevant parts of Census Statistical Units that are divided by the proposed enterprise zone boundary;

(b) The Applicant may ignore the available data for Census Statistical Units that are divided by the proposed enterprise zone boundary, if no more than 25 percent of the inhabitants inside the zone boundary also reside within all ignored Census Statistical Units;

(c) The Applicant must utilize the available data for Census Statistical Units that are divided by the proposed enterprise zone boundary, if 75 percent or more of the inhabitants in each utilized Census Statistical Unit also reside within the zone boundary;

(d) The requisite percentages in subsections (b) and (c) of this section must be verified in writing; and

(e) Notwithstanding the specific parameters of subsections (b), (c) and (d) of this section, the Applicant for designation of a proposed urban enterprise zone may use a Target Community that the Applicant identifies and demonstrates as conforming with OAR 123-065-1600(5) to the satisfaction of the Department (not applicable to nonurban zones).

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) 285C.250(4)
Stats. Implemented: ORS 285C.065, 285C.075, 285C.090 & 285C.250
Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1650

Strategic Planning

The Strategic Plan for purposes of OAR 123-065-1570(6) will be evaluated on its relevancy to the proposed enterprise zone and in terms of how completely and effectively it contains, addresses or utilizes the following:

(1) Coordinated economic, human, community and physical development for the zone, local area or region based on goals and a strategic vision for change, arising from a broad-based consensus among local entities and people of various backgrounds.

(2) Involvement of local stakeholders and community institutions from the public, private and nonprofit sectors as full partners in developing and implementing this Strategic Plan, including but not limited to:

(a) Arrangements by the Sponsoring Governments with other local governments throughout a region of this state or with part of a neighboring state;

(b) Partnership roles with state and federal agencies responsible for land use, transportation, human services, housing, environmental protection and so forth; or

(c) Formal governance or organization structures for purposes of this Strategic Plan.

(3) Assessments of community and regional circumstances, as well as analyses that identify how to capitalize on:

(a) Local and regional trends, challenges, strengths, opportunities and so forth;

(b) Other elements of this Strategic Plan, in particular the use of measurable outcomes and accountability for sections (9) and (10) of this rule; and

(c) Any type of attribute or resource (whether tangible and intangible) that is capable of enhancing development (for example, infrastructure, other economic incentives, human capital, past successes, desirable quality of life or renowned attractions).

(4) Funding or financing requested or received from any institution or governmental program, especially insofar as such financial resources will be innovatively and effectively integrated with other public or private investments, to support development in the proposed zone.

(5) Linkages to other elements of the application for designation of the proposed zone as described in OAR 123-065-1570 and 123-065-1590.

ADMINISTRATIVE RULES

(6) Efforts aimed at furthering a favorable business climate, an active and involved private sector, locally created enterprises, expansion of existing commerce and industry, or local gains from international trade.

(7) Strategies, programs and projects to improve such matters as local public safety or social support systems for helping individuals and families to overcome personal problems and dependencies that restrict their ability to seize the economic opportunities envisioned by this Strategic Plan or the proposed enterprise zone, or to contribute fully to their local community, over the near and long term.

(8) Strategies, municipal programs for capital improvement, comprehensive land use plans or designations, and so forth, designed to achieve sustainable, high-quality development, and to strengthen the local economy by improving environmental conditions, including but not limited to the redevelopment of potentially contaminated land.

(9) Method or methods for measuring the success of this Strategic Plan, such as benchmarks, performance indicators or statistical techniques, including but not limited to favorable changes in the social or economic data used for OAR 123-065-1560.

(10) An action plan or plans that describe immediate and progressively longer-term programs, activities, projects and so forth, along with a schedule:

(a) For achieving specified results or objectives for particular elements or for this overall Strategic Plan; and

(b) For reviewing the progress toward such results and objectives and for adjusting the Strategic Plan, as appropriate, within the original framework of consensus and partnership.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) 285C.250(4)
Stats. Implemented: ORS 285C.065, 285C.075, 285C.105 & 285C.250
Hist.: EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1670

Project-Ready Land

OAR 123-065-1510(3), 123-065-1530(4)(b) and 123-065-1570(7) relate to sites for manufacturing and other activities inside the enterprise zone that are essentially ready for development or redevelopment, or that would be, not more than generally six months after an eligible business firm determines to undertake operations at that location, such that:

(1) Any development delay of up to 180 days is:

(a) Subject to rather low probability of further complications or barriers; and

(b) Quantifiable in terms total cost, schedule and other factors affecting final resolution.

(2) Relevant sites shall largely conform to what is necessary for certification according to the process established by the Department under ORS 284.565, but they do not need to be actually certified or to completely satisfy all such criteria.

(3) Consistent with section (2) of this rule, these sites or land parcels shall be:

(a) Available for acquisition at a reasonable price without any significant encumbrance, such as liens, easements or any large, unusable existing structure;

(b) At least 5 acres in size or larger depending on expected uses/development types;

(c) Flat, regularly shaped and geologically stable;

(d) Completely outside the 100-year floodplain;

(e) Zoned outright for expressively permitted uses corresponding to eligible enterprise zone operations, under clear zoning ordinances, consistent with an acknowledged comprehensive plan, and preferably inside an urban growth or unincorporated community boundary;

(f) Suitably surveyed or assessed for protected environmental and cultural resources (contaminants, wetland, species, archaeological sites and historic structures), and documented as free of major impediments arising from such protections; and

(g) Relative to permitted uses and expected business development/operations, effectively:

(A) Accessible in terms of site egress/ingress, as well as local infrastructure, traffic capacity and routes to and onto nearby, major highways; and

(B) Served by on-site connections to systems with sufficient excess capacity for drinking water, sanitary sewage and electric power.

(4) In addition to the enterprise zone map identifying relevant sites, proper evidence or materials about these sites may include but are not limited to:

(a) Copy of a letter of industrial site certification from the Director;

(b) Filled-out application for industrial site certification, with attached copies of key/sample portions from associated documentation;

(c) Letters or testimonials from the property owner, qualified engineering, scientific or archaeological professionals, utility providers, or local/state government officials;

(d) Real estate listing or advertisement;

(e) Copy of recent report by a certified appraiser and title company;

(f) Copy of cover page/executive summary from timely environmental/cultural assessment report by a qualified professional/consulting firm; and

(g) Intelligible and authoritative aerial photography and maps that:

(A) Highlight the site(s) in question and offer local context and orientation for the reader; and

(B) Relate authoritative data about/from the following: Flood plain, topography, geology, ALTA survey, wetlands delineation, existing on-site improvements, land-use zoning, site access, local transportation routes/patterns, and so forth.

(5) The Department may relax its treatment of any stipulation described in this rule for a site that exhibits other offsetting attributes that significantly contribute to the readiness or attractiveness of the site for development by traded-sector industries.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) 285C.250(4)
Stats. Implemented: ORS 284.565, 285B.283, 285B.286, 285C.055, 285C.060, 285C.065, 285C.075, 285C.105 & 285C.250
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1700

Purpose and Scope

OAR 123-065-1700 to 123-065-1799 are intended to address the way in which the Department and the enterprise zones under ORS 285C.050 to 285C.250 relate to Federal Enterprise Zones for purposes of ORS 285C.085.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.085

Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1710

Definitions

For purposes of this division of administrative rules:

(1) As used in ORS 285C.085(4)(b), "all areas within both the federal enterprise zone and the city or county are included in a state enterprise zone" means that for any designation or boundary change as described in OAR 123-065-1720 or 123-065-1730:

(a) All current areas of the Federal Enterprise Zone must be inside the boundary of the enterprise zone, as effected by the designation or change, inasmuch as they are also in a city or county that requests the designation or change and that sponsors the zone;

(b) Any area of the Federal Enterprise Zone inside a city or county that does not sponsor the zone is excluded; and

(c) The prohibition of OAR 123-065-0080(4) against overlapping zones must be maintained, irrespective of OAR 123-065-0080(5).

(2) **Federal Enterprise Zone** under ORS 285C.050(9) means any designation by any agency of the federal government that meets the following criteria, regardless of the name, including but not limited to Enterprise Communities and Empowerment Zones under sections 1391 et seq., **Internal Revenue Code of 1986**, such that the designation is:

(a) Not terminated;

(b) Located at least partially in this state;

(c) Delimited by formal boundaries and an established period of existence of at least five years from the time of the federal designation;

(d) Intended at least in part to create or improve economic opportunities and development within the local community;

(e) Provided for by federal law that includes congressionally authorized benefits for purposes of subsection (d) of this section;

(f) Qualified based on federal guidelines, including but not limited to criteria for a level of economic hardship, generally comparable to that indicated under ORS 285C.090; and

(g) Subject to a significant degree of national selectivity and uniqueness, in relation to subsection (f) of this section, such that having more than five of any designation type awarded to this state would be highly unlikely.

(3) As used in ORS 285C.085(1), "federal enterprise zone program" means the official activities related to the application, designation or operation of a Federal Enterprise Zone or benefits exclusive to the designation that must or may involve state government participation, for which the lead agency role ascribed to the Department does not necessarily prevent another state agency from having primary responsibility for such an activity, as appropriate or required under state policies or federal guidelines.

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

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.050 & 285C.085

ADMINISTRATIVE RULES

Hist.: EDD 5-1999(Temp), f. & cert. ef. 8-20-99 thru 10-23-99; EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.085

Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1720

Designation Based on Federal Enterprise Zone Status

For purposes of a local request for designation of an enterprise zone under ORS 285C.085(2):

(1) City or county governments may apply (in a manner generally consistent with the provisions of OAR 123-065-1520 to 123-065-1540) for designation of a zone corresponding to the boundary of a single Federal Enterprise Zone located in the government's jurisdiction, such that:

(a) Application may occur at any time without regard to deadlines, a Round of Designation or an application form;

(b) Besides a map and legal description of the proposed enterprise zone, the application must document the Federal Enterprise Zone's official existence, location and satisfaction of OAR 123-065-1710(2), except to the extent that the Department is already fully aware of such satisfaction;

(c) Information related to local economic hardship, land use/zoning or estimated surface area is not necessary;

(d) The governments must engage in timely communication only with affected special service districts comparable to what is described in OAR 123-065-1050;

(e) Any cosponsor of a zone terminated by order of the Director under ORS 285C.245(4) or (5) is not excluded from applying;

(f) Application may include a request for hotels, motels or destination resorts to be eligible business firms in the zone in accordance with ORS 285C.070;

(g) Proposals by a cosponsor for local incentives shall not be binding; and

(h) The designation may not serve as the re-designation of a Preexisting Enterprise Zone.

(2) The designation of the zone may be made without regard to any limitation on the:

(a) Number or location of enterprise zones as authorized by state law; or

(b) Size or dimensions of an enterprise zone as described in OAR 123-065-0080 and 123-065-0090.

(3) The zone must still conform to the requirements for:

(a) Sponsorship, in accordance with OAR 123-065-0010;

(b) Being either urban or nonurban as described in OAR 123-065-0100, except for a special waiver and determination, at the Director's discretion, as to the more suitable categorization; and

(c) Inclusion of all area in each cosponsor that is inside the Federal Enterprise Zone as described in OAR 123-065-1710(1).

(4) The Director's order of designation shall essentially follow OAR 123-065-1557.

(5) A cosponsor of an existing enterprise zone may not seek designation of another zone as described in this rule, whenever:

(a) The Federal Enterprise Zone overlaps with a portion of the existing enterprise zone; or

(b) The cosponsor is a city with less than 100,000 in population.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.080, 285C.085 & 285C.090

Hist.: EDD 5-1999(Temp), f. & cert. ef. 8-20-99 thru 10-23-99; EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1730

Boundary Change to Incorporate a Federal Enterprise Zone

For purposes of a local request to change the boundary of an existing enterprise zone under ORS 285C.085(3):

(1) The request for the boundary change shall be treated like any such request under ORS 285C.115 consistent with OAR 123-065-0300 to 123-065-0399, except for equivalent allowances and exceptions as described in OAR 123-065-1720.

(2) Such a boundary change may add an area to the existing zone, only if the area is located in a county in which the zone is already located or in a contiguous county.

(3) Following the change in the zone boundary, the existing zone shall be Terminated by Statute or may be terminated by order of the Director, as normal under ORS 285C.245, irrespective of the boundary change.

(4) If the Federal Enterprise Zone is prematurely terminated by the federal government for nonperformance, violation of federal guidelines or similarly unusual circumstances, then the Director may rescind the order changing the boundary of the zone, as if that boundary change had never occurred, except that any business firm located in an area removed from the zone shall be treated consistent with the relevant provisions in statute and law for location in a terminated enterprise zone.

123-065-1740

Further Changes to Enterprise Zones under this Subdivision

Once an enterprise zone has been designated or its boundary changed as described in OAR 123-065-1720 or 123-065-1730, a change in the boundary of the zone may be requested and done under ORS 285C.115, as otherwise allowed by applicable provisions, with the following clarifications:

(1) If the total area of the enterprise zone equals or exceeds 12 square miles, additional areas may be included, pursuant to OAR 123-065-1730, only if those areas are located:

(a) In parts of the Federal Enterprise Zone within a city or county requesting to become a cosponsor of the zone with the boundary change;

(b) In new parts of the Federal Enterprise Zone, as amended by authority of the federal government; or

(c) In another Federal Enterprise Zone that is located in a city or county that sponsors the zone.

(2) If the zone exceeds the maximum overall allowed distance applicable to the zone, additional areas may be included in one of the following ways:

(a) Consistent with section (1) of this rule, whenever total area of the zone will or already does equal or exceed 12 square miles;

(b) Where such areas do not increase the overall distance within the zone consistent with ORS 285C.120(1)(b) and (c); or

(c) By virtue of a waiver under ORS 285C.120(2) (see OAR 123-065-0095).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.085 & 285C.115

Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1750

Termination of Enterprise Zones Designated under this Subdivision

For an enterprise zone designated as described in OAR 123-065-1720:

(1) The zone is Terminated by Statute as normal under ORS 285C.245(2), subsequent to the effective date of designation by order of the Director, regardless of any intervening termination of the Federal Enterprise Zone due to programmed operation under federal statutes or repeal of the operative federal law.

(2) The zone may terminate prematurely for the reasons indicated under ORS 285C.245(3).

(3) With respect to termination as described in either section (1) or (2) of this rule, an enterprise zone shall or may, respectively, be designated under ORS 285C.250 to replace the terminated zone, subject to all the regular provisions for a new zone.

(4) In addition, the zone may also be terminated by order of the Director under ORS 285C.085(5), if the federal government prematurely terminates the Federal Enterprise Zone for nonperformance, violation of federal guidelines or similarly unusual circumstances. In this case, there is no provision for a replacement designation under ORS 285C.250, and the Director shall effectively rescind the order designating the zone, as if it had never existed, except that any business firm located in the zone shall be treated consistent with the relevant provisions in statute and law for location in a terminated enterprise zone.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.085 & 285C.245

Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1900

Events and Timing

(1) Determinations by the Director on the designation, termination or rejection of an application for designation of an enterprise zone are final.

(2) Enterprise zones that are Terminated by Statute or are designated as replacements under ORS 285C.250(1) shall be terminated or designated effective at 12 midnight of July 1.

(3) Any zone that is designated under ORS 285C.250(1) to replace an enterprise zone that was concurrently Terminated by Statute shall not itself terminate under ORS 285C.245(2) until in effect eleven tax years after its designation.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.245 & 285C.250

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; Renumbered from 123-065-0400, EDD 1-2005, f. & cert. ef. 2-25-05

ADMINISTRATIVE RULES

123-065-1910

After Termination of the Zone

Following the termination of an enterprise zone:

(1) The local policies adopted by the zone sponsor under ORS 285C.105 or other statutory provisions shall remain in force as they were at the time of termination.

(2) The only change that the sponsor of the terminated zone may make to the zone's local policies is to appoint a replacement as needed for the local zone manager, if the position previously held by the local zone manager lacks qualified personnel.

(3) Within six months following the termination of the enterprise zone, the sponsor of the terminated zone and the county assessor shall jointly submit to the Department of Revenue, the Department and the contact agency for first-source hiring agreements, a complete list of:

(a) The names of all business firms authorized or qualified in the zone at the time of termination and located outside of any currently designated enterprise zone;

(b) The dates on which each authorization application was submitted and finally approved;

(c) The anticipated initial first year of each exemption; and

(d) The status of each investment or exemption of the authorized or qualified business firm (for example, "under construction").

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.105, 285C.130, 285C.140 & 285C.245

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00; Renumbered from 123-065-0410, EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1920

Early Termination of an Unused Zone

Under ORS 285C.245(6), an enterprise zone terminates (in a manner comparable to one Terminated by Statute) if no eligible business firm has effectively used the zone after at least six full years, such that:

(1) The Director shall order the termination effective on December 31 that occurs six years after the December 31 that was or that immediately followed the effective date of the zone's designation.

(2) This rule does not apply if the Department determines that on or before the relevant December-31 date, a business firm qualified in that zone for an exemption under ORS 285C.175.

(3) If the Department finds that during the sixth calendar year of the zone's existence, an actively authorized business firm has placed qualified property in service, termination per this rule shall be treated as provisional and shall be rescinded and reversed when the firm successfully claims the exemption.

(4) Termination of an enterprise zone as described in this rule does not preclude the sponsor or any cosponsor of the zone from applying for designation of another enterprise zone, though not as a Preexisting Enterprise Zone.

(5) This rule has no bearing on:

(a) A reservation enterprise zone; or

(b) Any enterprise zone for which the date of designation preceded

January 1, 2004.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.245 & 285C.250

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-2500

Purpose and Scope

OAR 123-065-2500 to 123-065-2599 are intended to provide guidance and parameters applicable to any situation provided by law, under which the local government or governments that sponsor an enterprise zone may (jointly) impose additional requirements on a business firm that is receiving tax benefits associated with an investment in the enterprise zone.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-2510

Applicable Situations

OAR 123-065-2500 to 123-065-2599 shall govern the following situations of locally imposed requirements in an enterprise zone:

(1) The written agreement with the zone sponsor for the long-term rural tax incentives, under ORS 285C.403(3)(c).

(2) Whenever the three- to five-year property tax exemption entails any of the following:

(a) A written agreement for the extended abatement for an exemption period of four or five consecutive years in total under ORS 285C.160;

(b) Adoption of a resolution or resolutions by the zone sponsor waiving the usual requirement of an increase in employment in the zone, under ORS 285C.155 and 285C.200(2); or

(c) Policy and standards adopted by the sponsor of an urban enterprise zone under ORS 285C.150, for which further specification is found in OAR 123-065-0230 for such local conditions.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160, 285C.403

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-2520

Basic Parameters

For the additional requirements of an enterprise zone sponsor:

(1) They shall apply to actions and achievements of the business firm only:

(a) With respect to operations inside (or nearby and affected by operations in) the enterprise zone; and

(b) Between:

(A) The time of authorization (certification in the case of the long-term rural tax incentives); and

(B) The end of the last tax year of the overall enterprise zone exemption period.

(2) Notwithstanding section (1) of this rule, the zone sponsor and the business firm may mutually agree, subject to possibly certain contingencies, to automatically apply current requirements or provisions of an agreement to identified future situations as described in OAR 123-065-2510.

(3) They shall not require that the eligible business firm's hiring, recruitment, promotion, training, compensation or treatment of its actual or potential employees, suppliers, contractors or customers be based on:

(a) Those persons' or businesses' residency or geographic location, consistent with OP-8236, Oregon Attorney General (April 20, 1995); or

(b) Other legally impermissible criteria.

(4) They may be offered by the zone sponsor as multiple options from which the eligible business firm freely selects, so long as:

(a) Each optional requirement conforms with OAR 123-065-2500 to 123-065-2599; and

(b) The firm's selection, and thus what the firm is required to satisfy or not satisfy among the options, is specified in the agreement between the firm and the zone sponsor, the resolutions and other applicable documentation.

(5) Failure by a qualified business firm to satisfy an additional requirement need not result in disqualification or loss of the tax benefits or the exemption on property, if as specifically allowed:

(a) The firm's continuing qualification does not depend on compliance with that requirement; or

(b) The firm may fulfill an alternative requirement to avoid disqualification. (An alternative requirement shall not preclude the firm's disqualification, if the firm later fails to adequately fulfill the alternative requirement or any other requirement)

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-2530

Additional to Statutory Provisions

Requirements imposed on a business firm by an enterprise zone sponsor are in addition to what is provided under applicable statutes or state laws, and shall neither alter nor undermine their effect or intent, such that:

(1) With respect to the following, as established by relevant state provisions, the requirements may in no way:

(a) Affect the basic eligibility or ineligibility of certain business activities or uses of relevant property;

(b) Modify any specified minimum level of investment by the firm; or

(c) Alter the coverage, extent, period or any other aspect of the tax benefit itself, although:

(A) Other forms of financial remuneration by the firm are possible; and

(B) The sponsor shall set the total period of tax benefit as provided by the relevant law or statute.

(2) The requirements may neither modify nor in any way effectively decrease or increase the stringency of state requirements for hiring, general employment levels or average pay/compensation associated with jobs or persons employed by the firm, and they shall not even address such issues, except for local requirements that:

(a) Govern employees that are not affected or covered by the relevant state requirement (for example, construction or temporary workers);

(b) Set an alternative employment level under ORS 285C.155;

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(c) Specify extra demands within the context of a first-source hiring agreement that the firm is otherwise required to enter into; or

(d) Obligate the firm in a reasonable manner with respect to the following: workforce development, hiring/retention from certain sources or groups, the general nature of benefits, or other employment-related matters categorically different from actual requirements under ORS 285C.050 to 285B.250 or 285C.412.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403
Hist.: EDD 9-2000, f. & cert., ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-2540

Reasonableness

This rule offers the following guidance and general criteria, which are not exhaustive, for evaluating whether local additional enterprise zone requirements are reasonable:

(1) The requirements may not vary dramatically or erratically over time for business firms interested in investing in the zone and seeking special benefits or waivers.

(2) The requirements may not be arbitrarily applied, implemented or enforced, in that the sponsor shall be consistent not only in setting conditions, but also in how any compliance issue is handled.

(3) The requirements may be differentiated among relevant business firms, for a given situation as described in OAR 123-065-2510, in terms of investment size, the firm's industry and so forth, but such differentiation must be:

- (a) Based on definable characteristics;
- (b) Consistently used; and
- (c) Explicated in terms of a public purpose.

(4) The requirements may entail economic costs to the firm as a result of payments to the sponsor or other entities, or of actions undertaken by the firm, but these costs (less any other consequent benefit to the firm) shall not effectively undermine the tax benefit for the eligible business firm, in that:

(a) Based on equivalent present-value estimations, these costs shall not exceed one-third of the tax savings associated with the property tax abatement.

(b) With a written agreement in the case of OAR 123-065-2510(1) or (2)(a) the firm may accept higher costs based on its own considerations.

(5) The requirements may not demand procedures, practices or investments in excess of anything undertaken in the firm's industry or related industries throughout the world, such that the sponsor shall be prepared to show that such a demand has been accomplished in the normal course of business elsewhere without apparent, extenuating circumstances.

(6) No requirement may cause or compel actions by the firm that have the potential to pose a significant other legal, financial or business threat to the firm, such as:

- (a) Surrendering significant rights, privileges or immunities under state or federal law;
- (b) Labor relations that may compromise practices by the firm in other locations where it operates in the United States; or
- (c) The release of information that is proprietary, confidential or otherwise threatening to the firm's market competitiveness or contractual obligations or that of any third party.

(7) The criteria in this rule relate to a zone sponsor's underlying policy, hence the recommendations in OAR 123-065-2550 for deliberate and explicit policy-making to cover certain potentialities.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403
Hist.: EDD 9-2000, f. & cert., ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-2550

Zone Sponsor Policies & Approval of Agreements

(1) In imposing or setting additional requirements on business firms, an enterprise zone sponsor shall consider a policy-making approach to maintain consistency and rationality, especially in view of the following:

- (a) Constitutional and other legal protections for business firms; and
- (b) General principles of fairness and clarity regarding public purposes and intent.

(2) Such a policy may apply uniformly to the situations as described in OAR 123-065-2510, or it may pertain to only certain situations

(3) Such a policy is relevant to the sponsor's basic elections in granting or refusing special benefits or waivers, as well as the additional requirements imposed or sought when granting the benefit or waiver to a business firm.

(4) Except for conditions imposed by an urban zone under ORS 285C.150, such a policy for purposes of OAR 123-065-2500 to 123-065-2599 does not need to be adopted before initial application or based on for-

mal documentation, and may reflect the cumulative effect of the sponsor's relevant past actions. However, the Department recommends a formal, explicit and prospective policy as circumstances, such as the following, arise:

(a) The instances of relevant requests by business firms are common or expected to become increasingly frequent;

(b) Sponsor's basic decision to grant or refuse a special benefit or waiver, or to impose additional requirements, is differentiated in terms of business or investment size or comparable factors;

(c) The requirements imposed are numerous, complicated or otherwise entail various contingencies or matters of judgment suggest the need for definite standards; or

(d) The sponsor departs from a general pattern in terms of granting a special benefit or waiver or imposing certain corresponding requirements.

(5) In an urban enterprise zone that has adopted a policy under ORS 285C.150, any additional requirements imposed for other situations as described in OAR 123-065-2510(2) must:

(a) Formally relate to the policy and standards adopted by the sponsor; and

(b) Be in addition to and not replace any condition normally imposed by the sponsor.

(6) A city or county government that sponsors two or more enterprise zones is free to have different policies or seek different local additional requirements among those zones.

(7) In an enterprise zone sponsored by more than one city or county jurisdiction, the cosponsors must all jointly:

(a) Adopt the same policy, standards, established local conditions and so forth under equivalent authority/method for purposes of this rule and the enterprise zone; and

(b) Approve the same requisite written agreement (respectively to each jurisdiction and situation, as described in section (8) of this rule).

(8) The sponsoring city or county jurisdiction or jurisdictions of an enterprise zone may authorize the written agreement in the case of OAR 123-065-2510(1) or (2)(a) through a number of approaches, including but not limited to the following examples:

(a) Approval by an official empowered to enter into such an agreement under the laws, charters, ordinances and conventions of the jurisdiction;

(b) Approval by the specific person or persons formally recognized to conclude such an agreement with the eligible business firm, pursuant to a previous understanding between the firm and the jurisdiction or between the firm and the zone sponsor;

(c) A specific resolution that is approved by the governing body of the jurisdiction and that sanctions a draft written agreement proposed by the eligible business firm;

(d) A specific resolution that is approved by the governing body of the jurisdiction and that authorizes an agent to conclude such an agreement with the eligible business firm; or

(e) A standing policy adopted by the jurisdiction that empowers a particular agent to negotiate such an agreement with all or some eligible business firms on behalf of the jurisdiction (for example, the local zone manager).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403
Hist.: EDD 9-2000, f. & cert., ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-2700

Purpose and Scope

OAR 123-065-2700 to 123-065-2799 are intended (and are reserved) to provide special guidance as necessary for the appropriate accounting, collection and use of moneys received by the sponsor of an enterprise zone from business firms, such that:

(1) These moneys represent a special resource for an enterprise zone, but they are likely to be significant in only unusual cases.

(2) The sponsor may receive moneys for the following reasons as specified in statute or law:

(a) The authorization filing fee under ORS 285C.140(1)(c);

(b) The payback of one year's tax savings in lieu of disqualification under ORS 285C.240(6); or

(c) The distribution to the sponsor and other taxing districts of 30 percent of the corporate income or excise taxes paid by a corporation under ORS 317.131.

(3) Moneys or funds arising from local additional requirements imposed by the sponsor on a business firm, in accordance with OAR 123-065-2500 to 123-065-2599, may also be subject to these administrative rules.

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(4) These administrative rules are in addition to specific guidance governing particular sources of such moneys in this division of administrative rules, including but not limited to OAR 123-065-0220, 123-065-3850 or 123-065-4950 to 123-065-4990.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.105, 285C.140, 285C.150, 285C.155, 285C.160, 285C.240, 285C.403 & 317.131
Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3000

Purpose and Scope

OAR 123-065-3000 to 123-065-3999 clarify and establish provisions of ORS 285C.400 to 285C.420 and 317.124 to 317.131 (2003) for determinations, procedures and requirements of the “up-to” 15 years of exemption from property taxes and corporate excise tax credits on a qualifying investment inside a nonurban enterprise zone (including but not limited to a reservation enterprise zone under ORS 285C.300 to 285C.320) in a county experiencing particular economic hardship. These administrative rules do not control fiscal parameters of actual implementation by the county assessor or the Department of Revenue, and they are not intended to supersede administrative rules in OAR chapter 150 for any such purpose.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 285C.400 - 285C.420, 317.124 - 317.131
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3030

Relationship to Rest of Division

OAR 123-065-3000 to 123-065-3999 do not affect the administrative rules elsewhere in this division that interpret ORS 285C.050 to 285C.250, and unless the context or specific references demand otherwise, such other parts of this division of administrative rules likewise do not apply to OAR 123-065-3000 to 123-065-3999, except for such fundamental matters as the existence and attributes of an enterprise zone or the overall enterprise zone system.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1)
Stats. Implemented: ORS 285B.781 - 285B.796 & 317.124 - 317.131
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3110

Definition of Economic Terms

As used in ORS 285C.400(3) (also, see OAR 123-065-3200):

(1) “Most recently revised annual average unemployment rate ... available” means the estimated percent of the civilian labor force that is unemployed on average for the entire previous calendar year and other relevant prior years, as benchmarked and published by the Employment Department in cooperation with the United States Bureau of Labor Statistics, as well as subsequent revisions to those percentages.

(2) “Most recently revised ... annual per capita income levels available” means the average annual per capita personal income level as published and revised by the Bureau of Economic Analysis of the United States Department of Commerce for the most recent calendar years available, as well as subsequent revisions to those levels.

(3) “Median ratio ... of the county to the equivalent ... of the entire United States for each year” means that for each year the annual average unemployment rate or average annual per capita personal income for the county is divided by the same year’s national figure, and then from among the resulting quotients (ratios) equal numbers of highest and lowest values are ignored, so that the ‘median ratio’ is the one remaining value or the two remaining quotients added together and divided by two.

(4) “Equal to or less than 0.75 over the last 10 years” means that the relevant median derived per section (3) of this rule is computed for the most recent 10 consecutive years, for which figures as described in section (2) of this rule are available, and that the resulting median is equal to or less than 0.75 rounded to the nearest hundredth.

(5) Using the latest available figures as described in section (1) of this rule, “at least 1.3 over the last 20 years or over the last 10 years” means that the relevant median derived per section (3) of this rule is computed separately for the most recent 20 consecutive years and the most recent 10 consecutive years, and that at least one of the two resulting medians is equal to or greater than 1.3 rounded to the nearest tenth.

(6) “Negative net migration” means the county’s change in total population minus natural population change (births - deaths) is equal to or less than negative one (-1), based on the most recent county population estimates available from the Portland State University Center for Population Research and Census, in comparison to the latest official decennial popula-

tion count by the U.S. Census Bureau at least three entire years before this most recent estimate.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 285C.400
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3130

Definition of Facility

As used in ORS 285C.400 to 285C.420 and 317.124 to 317.131, “facility” or “facility site” has the meaning given in ORS 285C.400(4) and includes all of the following:

(1) A building or structure or group of two or more associated buildings and/or structures, located at a common site or proximately adjacent sites entirely inside the boundary of a single nonurban enterprise zone, such that each building or structure is newly constructed beginning after the application for certification

(2) New additions or modifications occurring entirely after the application for certification to any previously constructed or occupied building or structure as otherwise described in section (1) of this rule.

(3) All of the real or personal property located at the site, whether or not it is inside or on a building or structure, as described in section (1) or (2) of this rule:

(a) If newly installed after the application for certification.

(b) Except for any vehicle, as well as device pulled, pushed or carried by a vehicle, that is designed to hold and transport people, goods or property on highways, waterways or railways beyond the zone boundary, including but not limited to aircraft, barges, carriages, railroad cars, trailers, trucks or ships.

(4) Any property leased by the business firm certified to receive the exemption under ORS 285C.409 and otherwise described in this rule, but only:

(a) For the exemption, and not for the corporate excise or income tax credit under ORS 317.124, in which case only personal property may be leased; and

(b) If the firm is fully responsible for and pays all of the applicable ad valorem taxes potentially levied on such leased property through explicit provisions of the lease agreement.

(5) In claiming the exemption under ORS 285C.409 with the county assessor, the certified business firm may formally and irreversibly exclude all property as described and categorized in section (1), (2) or (3) of this rule, so that that entire category of property is subject to normal taxation for the remainder of the exemption, if the exclusion is indicated in the agreement under ORS 285C.403(3)(c).

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 285C.400 - 285C.420 & 317.124 - 317.131
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3140

Definition of “In Service”

As used in ORS 285C.400 to 285C.420 and 317.124 to 317.131, “in service” has the meaning described in OAR 150-285C.409 (notwithstanding the definition under ORS 285C.050 as used for the exemption under ORS 285C.170 and 285C.175).

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 285C.400 - 285C.420, 317.124 - 317.131
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3170

Definition of Sponsor

As used in ORS 285C.400 to 285C.420 and 317.124 to 317.131, “sponsor” or “zone sponsor” has the same meaning as described in OAR 123-065-0140, in that all cosponsors of the zone shall jointly approve or exercise any and all actions under ORS 285C.400 to 285C.420 and 317.124 to 317.131, except for the particular adoption of a resolution as required under ORS 285C.403(3)(a).

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 285C.400 - 285C.420, 317.124 - 317.131
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

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123-065-3200

Determining Eligible Nonurban Enterprise Zones

In determining if a county conforms to the definition of ORS 285C.400(3) of a 'county with chronically low income or chronic unemployment':

(1) Typically in the spring, with the formal release, publication and availability of benchmarked annual unemployment rates for the previous year and other relevant data, the Department shall analyze these data, along with the most recently revised data available for other relevant prior years, and ascertain which counties in the state satisfy the definition.

(2) The Department shall identify any existing nonurban enterprise zone in those counties, preparing maps or other such information as feasible and appropriate for use by the general public and business firms, as well as respective local zone managers and county assessors.

(3) The official determination as described in this rule shall first take effect on July 1 next following formal availability of the latest relevant annual data and shall apply until and including June 30 of the next calendar year, pending:

- (a) Revisions, if any, as described in OAR 123-065-3230; or
- (b) The next annual determination.

(4) Conformance with the definition shall be achieved if OAR 123-065-3110(4), (5) or (6) is true.

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

Stats. Implemented: ORS 285C.400 & 285C.403

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3230

Revisions to Currently Eligible Nonurban Enterprise Zones

To ensure that the counties currently deemed as conforming with ORS 285C.400(3) accurately reflect the most recently revised annual data available for the nation and county, following a determination as described in OAR 123-065-3200:

(1) During the course of the year from July 1 to June 30, the Department may obtain an officially and publicly made revision or correction to relevant annual data.

(2) The Department shall review such revised data to determine whether it would alter the status of any county.

(3) Pursuant to section (2) of this rule, if any county is to be thus removed or added to the counties currently identified by OAR 123-065-3200:

(a) The effective date of any such change shall be the first day of the second month following the month in which the revised or corrected data was formally released or published; and

(b) The Department shall notify the county assessor and local zone manager of any nonurban enterprise zone in such a county and revise and reissue relevant lists, maps and other materials, as appropriate.

(4) A correct, prior determination in accordance with OAR 123-065-3200 or this rule may not be retroactively altered.

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

Stats. Implemented: ORS 285C.400 & 285C.403

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3300

Written Agreement

For purposes of the written agreement between a business firm and the sponsor of the nonurban enterprise zone under ORS 285C.403(3)(c) and (d):

(1) The agreement shall consist at a minimum of the following:

(a) Acknowledgment of the planned or pending application for certification under ORS 285C.403(1) and (2);

(b) Concise description of the firm's proposed investments, facility and workforce;

(c) Specification of the obligations that the proposed investments, facility and workforce must satisfy under ORS 285C.412, which are in no way superseded by the agreement;

(d) Identification of all the parties to the agreement and their representatives;

(e) Zone sponsor's explicit approval for the firm to receive the exemption under ORS 285C.409 on its qualifying facility;

(f) The sponsor's statement as to the number of consecutive tax years that will comprise the period of exemption beginning after the facility is placed in service, such that this period is only seven such years, if nothing to the contrary is stated about it being eight or more years (up to the maximum of 15 years); and

(g) With respect to additional conditions or requirements by the zone sponsor under ORS 285C.403(2)(e) and (3)(c):

(A) Indication that no such condition or requirement is imposed or requested; or

(B) Specification of any such condition or requirement, in accordance with OAR 123-065-2500 to 123-065-2599, including, at a minimum:

(i) Methods for demonstrating satisfaction of the condition or requirement; and

(ii) Explicit consequences for failure to satisfy the condition or requirement.

(2) The agreement may be:

(a) Part of a broader accord involving parties other than the firm and the sponsor, insofar as such an accord contains and cites the elements listed in section (1) of this rule.

(b) Preauthorized, directly sanctioned by resolution or approved by other means of the zone sponsor or of each cosponsor as described in OAR 123-065-2550.

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

Stats. Implemented: ORS 285C.403 & 285C.409

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3330

Timing of Written Agreement

For purposes of the requisite written agreement under ORS 285C.403(3)(c) and (d) between a business firm and the sponsor of a nonurban enterprise zone:

(1) The agreement must be concluded, signed and dated by an authorized representative or representatives of the firm and of the zone sponsor or of each cosponsor:

(a) On or after the effective date on which:

(A) The zone is designated or the facility site is amended into the zone through a change in the boundary of the zone; and

(B) The county containing the facility site is officially determined to conform with the definition of ORS 285C.400(3), pursuant to OAR 123-065-3200 or 123-065-3230; and

(b) Before the corresponding effective date on which:

(A) The zone is terminated; and

(B) The county is not subject to a positive official determination as described in paragraph (a)(B) of this section.

(2) The sponsor shall provide a copy of the concluded, signed and dated written agreement to the Department, which shall review the agreement and, if the following are accurate, issue a letter to be attached to the written agreement confirming that:

(a) As of the date of the agreement's execution, the county containing the facility site is officially determined to conform with the definition of ORS 285C.400(3), as described in OAR 123-065-3200 or 123-065-3230, and one party to the agreement is the sponsor of the nonurban enterprise zone; and

(b) The agreement satisfies applicable provisions of OAR 123-065-3300.

(3) Following the certification of the business firm as described in OAR 123-065-3430 or an effective date in subsection (1)(b) of this rule, the agreement may not be substantially modified, replaced, amended, supplemented or terminated, except as:

(a) Explicitly provided in the original version of the agreement; and

(b) Mutually accepted and documented by all parties to the agreement.

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

Stats. Implemented: ORS 285C.403 & 285C.406

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3360

County/City Resolutions

For purposes of resolutions adopted by the governing body of a county or city under ORS 285C.403(3)(a):

(1) A criterion for certification is adoption of a resolution approving the exemption for the facility by the county and any city in which the facility is located, such that:

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(a) Both the county and the city must adopt the resolution if any part of the facility is located in incorporated territory, but only the county, if the facility is located entirely in unincorporated territory;

(b) If such a county or city is the sponsor or a cosponsor of the zone, any authorization or approval of a written agreement pursuant to OAR 123-065-3300 by formal resolution of the city's or county's governing body shall automatically fulfill this criterion; and

(c) If such a county or city is neither the sponsor nor a cosponsor, it may nevertheless be a party to the written agreement in accordance with OAR 123-065-3300, but this criterion necessitating adoption of a formal resolution remains in effect.

(2) A resolution by the governing body of a city or county as described in section (1) of this rule or to approve a written agreement consistent with OAR 123-065-3300 may be adopted at any time with respect to conclusion of the agreement or the effective dates as described in OAR 123-065-3330(1). However, if the resolution substantially implements or provides for all or part of the agreement by the zone sponsor, as opposed to merely authorizing an otherwise operable agreement, the resolution must be adopted after conclusion of the agreement and prior to termination of the zone in order for the business firm to be certified.

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

Stats. Implemented: ORS 285C.403

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3400

Applying for Certification

For purposes of the application for certification under ORS 285C.403(1) and (2):

(1) In order for a business firm to receive the exemption on its facility under ORS 285C.409:

(a) The firm must do the following before hiring new employees to work at the proposed facility and before commencing any physical work on the facility, such as construction, reconstruction, additions, modifications or installations of any qualifying property or improvements:

(A) Fill out the latest revision of the Department of Revenue form 150-310-073, **Certification Application: Long-Term Rural Oregon Tax Incentive**, as completely as the firm is capable of doing;

(B) Have the form signed and dated by the owner or authorized representative of the firm;

(C) Submit a signed original of the form to either the local zone manager representing the sponsor of the enterprise zone or the county assessor of the county in which the facility is located; and

(D) Submit an executed copy of the form to either the local zone manager or the county assessor, whichever one does not receive the signed original.

(b) Submission of the application form as described in subsection (a) of this section must occur, with respect to the nonurban enterprise zone:

(A) On or after the effective date of the zone's designation or of a change to the zone boundary adding the facility site; and

(B) Before the effective date of the zone's termination.

(2) Submission of the application form may occur before or after any relevant resolution, commitment, written agreement or effective date of official determination of nonurban enterprise zone eligibility in the county.

(3) Estimated numbers, anticipated dates or other expectations indicated in the application form are to be based on the best and most current information available to the business firm and shall not be construed as binding in and of themselves. The business firm shall inform the local zone manager and county assessor in writing of any significant changes to such expectations.

(4) The commitments made by the business firm (as required in the application form or otherwise during the certification process) shall be accepted at face value for purposes of certifying the firm, but such a commitment shall not relieve the firm of actually needing to meet an applicable requirement under ORS 285C.400 to 285C.420 and 307.124 to 307.131.

[ED. NOTE: Forms referenced are available from the agency.]

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

Stats. Implemented: ORS 285C.403

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3430

Certification

For purposes of ORS 285C.403(3) to (6), following submission of the application for certification as described in OAR 123-065-3400:

(1) The signatures of the local zone manager and county assessor approving the certification application are not valid if either signature occurs:

(a) After any part of the facility is placed in service;

(b) After the operational date specified under ORS 285C.406(2); or

(c) Before any of the following (unless formally reaffirmed afterwards):

(A) The commitments by the firm in the application to meet requirements under ORS 285C.412;

(B) The relevant written agreement and the corresponding letter of confirmation by the Department as described in OAR 123-065-3330;

(C) Any resolution by the sponsor or a cosponsor of the zone that authorizes or effects the written agreement in paragraph (B) of this subsection; or

(D) The relevant resolution or resolutions by the county/city in which the facility is located under ORS 285C.403(3)(a).

(2) Approval of the certification application may occur after:

(a) The effective date of the termination of the enterprise zone; or

(b) Commencement of applicable hiring or physical work at or for the facility.

(3) Upon satisfaction of the criteria under ORS 285C.403(3), except as qualified in this rule and OAR 123-065-3460(2), the local zone manager and the county assessor shall approve the certification application, at which point:

(a) The business firm is "certified," such that it is eligible for the exemption under ORS 285C.409; and

(b) The zone manager and assessor shall send copies of the signed original certification application form with all relevant attachments to the firm, the Department and the Department of Revenue.

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

Stats. Implemented: ORS 285C.403, 285C.406, 285C.409 & 285C.412

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3445

Other Enterprise Zone or Construction Exemptions

For purposes of the exemption under ORS 285C.409:

(1) An eligible business firm may seek and receive approval for authorization under ORS 285C.140 or 285C.160, while applying for and being certified under ORS 285C.403, although the zone sponsor and business firm shall clarify and resolve the situation as soon as possible.

(2) However, any property exempted under ORS 285C.170 or 285C.175, whether in the same or another enterprise zone, may not concurrently or subsequently be exempt under any paragraph of ORS 285C.409(1).

(3) Property that is exempt under ORS 285C.409(1)(a) or (b) may not receive an exemption under ORS 285C.175, unless it is qualified property for which exemption would otherwise be allowed under ORS 285C.170, as described in OAR 123-065-4800.

(4) Property may be subject to exemption as otherwise allowed under ORS 307.330, without necessarily jeopardizing the exemption under ORS 285C.409(1)(c).

(5) This rule does not relieve a taxpayer of any requirement to timely file forms, evidence or notice with the county assessor for purposes of (or to reserve the taxpayer's right to) an exemption on property under ORS 285C.170 or 307.330 and 307.340, as well as ORS 285C.409.

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

Stats. Implemented: ORS 285C.403, 285C.409 & 285C.420

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3460

Post-Certification

With certification as described in OAR 123-065-3430:

(1) In order for a certified business firm's facility to qualify for the exemption under ORS 285C.409, the firm shall submit written notification and information to the county assessor (and to the zone sponsor, Department or Department of Revenue, as requested), including but not limited to easily understood documentation on the following:

(a) All property comprising the facility and how it complies with OAR 123-065-3130;

(b) Ownership of any leased property at the facility and corresponding lease agreements;

(c) When and how any applicable requirement under ORS 285C.412 is satisfied; and

(d) When and by what measure the facility has been placed in service.

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(2) In the absence of or in addition to, but not in lieu of, applicable provisions in this division of administrative rules or OAR chapter 150, the county assessor may arrange with the business firm in writing for certain methods and mechanisms to verify compliance with section (1) of this rule and the applicable requirements under ORS 285C.412, as a condition of the county assessor's approval of the certification application, regardless of the zone sponsor's concurrence or incorporation of such arrangements in the written agreement under ORS 285C.403(3)(c).

(3) Failure by the county assessor to seek or obtain the arrangements described in section (2) of this rule does not relieve the business firm of the obligation to demonstrate its compliance with and satisfaction of any applicable requirement.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 285C.409, 285C.412, 285C.415 & 285C.420
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-1998; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3480

Subsequent Investments

For purposes of real or personal property as described in OAR 123-065-3130 but newly located, completed and placed in service at the facility site on or after the January 1 "assessment date" cited in ORS 285C.409(1)(c):

(1) Any such property is subject to exemption from property taxes under ORS 285C.409 for the remainder of the 7 to 15 tax years available.

(2) Neither additional operations nor the introduction of such property at the facility shall lengthen or add to the exemption period on that or any property.

(3) A certified business firm may receive another (potentially overlapping) period of exemption affecting additional property at the same facility only if the firm, in accordance with ORS 285C.403, again:

- (a) Applies for certification;
- (b) Meets the relevant criteria for certification;
- (c) Satisfies the applicable requirements to qualify for the exemption under ORS 285C.412; and
- (d) Undertakes additional operations at the facility.

(4) The firm or the applicable facility must accomplish the items in section (3) of this rule entirely independent of and in addition to the respective actions and investments pertaining to the certification or qualification for any previously granted exemption under ORS 285C.409.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.403, 285C.409 & 285C.412
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3500

Minimum Size of Investment

For purposes of the minimum investment in the facility under ORS 285C.412(1)(a), (2)(a), (3)(a), (4)(b) or (5)(a) to be made by a certified business firm:

(1) Relevant investment costs for meeting the minimum shall include only expenses that can be documented through existing records or retrospective compilation of evidence, and that are incurred in association with property owned or leased by the firm that is part of the facility, for the following:

(a) Construction, reconstruction, modification or installation of such property, including but not limited to materials, supplies, labor, building contractors, engineering, physical connections to utilities, on-site development, and so forth; or

(b) Purchase of any such property. (Alternatively, the current real market value shall be used for property that is newly moved or transferred to the facility site but that was already owned or leased by the firm/owner of leased property)

(2) Regardless of association with the facility or property, relevant investment costs do not include:

(a) Cost of financing, public permit or service charges, legal fees, the value of the firm's own management, expenses to maintain finished property and so forth;

(b) Cost or value of property that at the time of certification is already owned or leased by the firm and located at the facility site; or

(c) Expenses associated with purchases or with construction, reconstruction, modifications or installations of property that is not completed until on or after January 1 immediately following the year when the facility is placed in service.

(3) The firm shall provide evidence to the assessor in writing when this requirement is satisfied as soon as possible after such satisfaction is verifiable.

(4) Property excluded by this rule does not necessarily affect what property may be exempt under ORS 285C.409, which depends on being part of the qualifying facility as described in OAR 123-065-3130.

(5) In determining 'real market value of all nonexempt taxable property in the county', the figure for the most recently available fiscal year shall be used, as printed in the latest edition of "Oregon Property Tax Statistics" (150-303-045), Oregon Department of Revenue, at the time of certification.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 285C.412 & 285C.415
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3530

Minimum Hiring

For purposes of the minimum hiring and employment to be met and maintained at an exempt facility under ORS 285C.412(1)(b), (2)(c), (3)(d), (4)(d) or (5)(c) by a certified business firm:

(1) Employees are persons each working directly or indirectly for the firm in excess of 32 hours per week (consistent with OAR 123-065-4060) in an established, permanent position.

(2) Twelve months prior to when the facility is placed in service, the firm shall establish and make available information showing the total number of employees, each of whose job is located and performed:

- (a) At the facility site; and
- (b) Within the state as a whole other than at the facility site.

(3) The minimum requirements are met if:

(a) The number of employees located and performing their jobs at the facility site, less the corresponding number of employees per subsection (2)(a), equals or exceeds the respective minimum; and

(b) The number of employees of the firm in the state as a whole other than at the facility site is the same or greater than the corresponding number of employees per subsection (2)(b) of this rule.

(4) The firm shall provide evidence to the assessor in writing when each subsection of section (3) of this rule is satisfied, as soon as possible after such satisfaction is achieved, such that:

(a) For subsection (3)(a) of this rule, this must occur on or before December 31 not more than the following number of years after December 31 of the year in which the facility is placed in service:

- (A) Five years for ORS 285C.412(1) or (4); or
- (B) Three years for ORS 285C.412(2), (3) or (5).

(b) For subsection (3)(b) of this rule, this must occur at the same time when the assessor is notified that the applicable requirement in subsection (a) is met and for 12 months afterwards.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 285C.412 & 285C.415
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3545

Minimum Distance from I-5

For purposes of the minimum distance from the facility of a certified business firm to Interstate Highway 5 under ORS 285C.412(3)(b) or (5)(b):

(1) The distance is measured as:

- (a) A straight line; and
- (b) The shortest possible gap between the nearest part of the facility site relative to any point along the median of the highway, regardless if that point is in this state or offers access on/off the highway.

(2) Spurs or bypasses such as I-105 or I-205 are excluded.

(3) Distance is rounded to the nearest whole number, such that an eligible location must be effectively farther than 10.4 miles from I-5.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 285C.412 & 285C.415
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3560

Minimum Average Annual Compensation

For purposes of the minimum average annual compensation to be met and maintained at an exempt facility under ORS 285C.412(1)(c), (2)(b), (3)(c), (4)(c) or (5)(d) by a certified business firm:

(1) The total remuneration during a calendar year shall be considered if it is:

(a) In the form of wages, salary, bonuses, shift differential, overtime pay, profit-sharing, paid vacation, or financial benefits such as life insur-

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ance, medical coverage or retirement plans, but excluding sales commissions, free meals, club membership, workplace amenities, benefits mandated by federal, state or local law, and so forth; and

(b) Paid to any employee located and performing work directly or indirectly for the firm at the facility site, regardless of hours worked per week or the permanence of the employee's position.

(2) For each job at the facility in which the employee works less than 40 hours per week or for less than the entire calendar-year period, the actual annual compensation described in section (1) of this rule shall be multiplied by the appropriate inverse time factor in order to approximate the equivalent level of annual compensation, as if the job is worked full-time for the entire year.

(3) Each employee's total annual compensation under section (1) or (2) of this rule shall be summed and divided by the number of applicable employees or positions to derive an average.

(4) On or before December 31 five years after December 31 of the year in which the facility is placed in service, this computed average must equal or exceed 150 percent of (1.5 times) the most recent average annual covered payroll per employee for all industries in the county in which the facility site is located, as then currently available and reported by the Employment Department.

(5) The firm shall provide evidence to the assessor in writing when section (4) of this rule is satisfied as soon as possible after such satisfaction is achieved.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 285C.412 & 285C.415
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3600

Maintaining Employment and Compensation

(1) Following initial satisfaction of the minimum requirement for total employment or average annual compensation, as described in OAR 123-065-3530 and 123-065-3560 at a facility exempt under ORS 285C.409, the facility's applicable employment or compensation may never be less than the mandatory minimum level, until after December 31 during the final tax year of the exemption period; otherwise, the exemption is disqualified consistent with OAR 150-285C.420.

(2) The mandatory minimum level for average annual compensation at the facility remains fixed, regardless of how much:

(a) The facility's annual average compensation initially exceeded the county's then current average annual wage level; or

(b) The county's average annual wage subsequently rises during the exemption period.

(3) Notwithstanding section (1) of this rule, the facility's applicable employment or compensation may fall below the mandatory minimum level under certain exceptional circumstances, including but not limited to the following:

(a) A natural disaster substantially disrupting the facility's operations;

(b) Six or more months of severe economic troubles or military conflict significantly affecting the United States, other major foreign economies and the firm's industry;

(c) Unforeseen coincidence of vacant positions at the facility, such as the case in which previously hired persons have died, voluntarily quit or been fired for cause; or

(d) Temporary curtailment in the operation of the facility lasting no longer than twelve months to undertake major repairs in response to mechanical breakdowns that are unusual and unexpected within normal engineering parameters and maintenance programming.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 285C.412, 285C.415 & 285C.420
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3800

Request for Tax Credit

For purposes of being approved for the tax credit under ORS 317.124(3), unless otherwise directed by the Governor or by the Director:

(1) A request for the credit shall be formally submitted to the Director from an authorized executive of the corporation, preferably pursuant to relevant local approval and certification under ORS 285C.403.

(2) Official consideration of the request by the Governor shall not be expected prior to such local approval.

(3) The request must explicitly indicate:

(a) That the corporation is seeking gubernatorial approval;

(b) When it would expect to begin claiming such credits; and

(c) Any preferred length of time during which credits may be claimed.

(4) The request shall contain the best possible information about the corporation's future income and plans to use the credit, as necessary to estimate the value and applicability of the tax credit.

(5) The Director will forward the request to the Governor, which may be accompanied by a recommendation or (as warranted) by the following:

(a) Background information and analysis about the corporation, the proposed facility, tax impacts, the local community and so forth; and

(b) Summary of consultations with other state agencies including but not limited to the Department of Revenue.

(6) Approval of the request may be conditioned on additional commitments by the corporation as contained in any form of agreement or arrangement with the State.

(7) The following is considered exempt from public release under ORS 192.502 and other laws:

(a) Any information received through the corporation as described in section (4) of this rule; and

(b) The request and any other information associated with it, whether drafted by the Department or otherwise generated, unless and until such time as the Governor has approved the request, thereby deeming such information to be final.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 317.124
Hist.: EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3830

Tax Credit

(1) To be effective, the Governor's approval of a corporate excise or income tax credit under ORS 317.124 may take the form of a letter, memo or similarly official document that:

(a) Names the corporation and refers to its qualifying facility;

(b) Simply grants the tax credit, approves the corporation's request or directs necessary action by State officials;

(c) Defines the length of the period during which the tax credits may be claimed; and

(d) Is done and effective by the ultimate due date (including as a consequence of normal extensions) to file a tax return for the corporation's fourth income/excise tax year, in which the facility is first placed in service.

(2) To claim the tax credit, as approved by the Governor, the certified business firm shall fill out the latest revision of the Department of Revenue form 150-102-043, **Long-Term Enterprise Zone Facilities Credit**, and submit it with the tax return for each applicable income/excise tax year of the corporation.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 317.124
Hist.: EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3850

Revenue Distribution to Local Zone Sponsor

(1) Consistent with OAR 123-065-2700(2)(c), the sponsor of an enterprise zone containing the facility of a corporation that claims the tax credit under ORS 317.124 may receive funds through the Department of Revenue from the Long Term Enterprise Zone Fund established under ORS 317.127.

(2) The sponsor shall annually receive such funds, unless the amount to be distributed under ORS 317.131 is less than or equal to the property taxes otherwise due to the relevant (special service) taxing districts — but for the exemption on the facility under ORS 285C.409 — respective to the property tax year corresponding to the state government fiscal year in which the funds are distributed.

(3)(a) If the amount to be distributed exceeds these foregone property taxes, then the remaining amount is distributed to the zone sponsor; or

(b) If there is no relevant exemption under ORS 285C.409 for the property tax year, then the entire amount is distributed to the zone sponsor.

(4) For purposes of section (3) of this rule, the zone sponsor is responsible for making timely arrangements, so that:

(a) The sponsor can receive distributed funds in a way that effectively ensures the Department of Revenue of having made payment to the zone sponsor (including but not limited to a joint mechanism for all cosponsors, or through a deposit account administered by a single cosponsor on behalf of the entire zone sponsorship); and

(b) The applicable provisions of ORS Chapter 294 and other state or local laws are satisfied with regard to collecting, holding and using such funds.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 317.131
Hist.: EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

ADMINISTRATIVE RULES

123-065-4000

Purpose and Scope

OAR 123-065-4000 to 123-065-4999 clarify, specify and establish elements of ORS 285C.050 to 285C.250 (**Oregon Enterprise Zone Act**) for the determinations, procedures and requirements relevant to the three- to five-year exemption from property taxes that is available for qualified property of eligible business firms in any enterprise zone. These administrative rule are not meant to interfere with the fiscal parameters or the direct administration of property taxes by county assessors, and they do not supersede administrative rules of the Department of Revenue in OAR chapter 150, as adopted or amended in the future, for purposes necessary under the statutory sections listed in ORS 285C.125(1).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050 - 285C.250 & 285C.260

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4010

Relationship to Rest of Division

OAR 123-065-4000 to 123-065-4999 do not affect the administrative rules elsewhere in this division that interpret ORS 285C.400 to 285C.420 and 307.124 to 307.131, and unless the context or specific references demand otherwise, such other parts of this division likewise do not apply to OAR 123-065-4000 to 123-065-4999. However, OAR 123-065-0000 to 123-065-2999 (including but not limited to statutory terms, boundary changes, termination or designation of enterprise zones, and the duties and additional requirements of a zone sponsor) do affect and interrelate with these administrative rules.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050 - 285C.250

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4020

Organization of Subsequent Rules and the Process for Businesses Seeking Exemption

The Oregon Enterprise Zone Act (ORS 285C.125 et seq.) provides for an exemption from taxation on property that lasts at least three years, starting when a business firm and the property first qualify, and based on the following elements of OAR 123-065-4000 to 123-065-4999:

(1) The usual three-year exemption period may be extended to four or five consecutive years of tax abatement in total, subject to particular processes, requirements and local approval before authorization (OAR 123-065-4100 to 123-065-4199).

(2) The firm must be an eligible business firm engaged in eligible activities, as determined with authorization (OAR 123-065-4200 to 123-065-4299).

(3) The eligible business firm must be authorized (OAR 123-065-4300 to 123-065-4399) by:

(a) Submitting an application form generally prior to beginning any work on the proposed investment; and

(b) Being ministerially approved by the local zone manager and the county assessor after special consultation.

(4) The business firm must satisfy certain basic employment and hiring requirements to initially qualify and must maintain related requirements during the exemption period to remain qualified (OAR 123-065-4400 to 123-065-4499, and see division 070 of this chapter of administrative rules).

(5) The exemption is available (OAR 123-065-4500 to 123-065-4599) only for:

(a) An authorized business firm that timely files with the county assessor to claim the exemption; and

(b) Certain kinds of property based on a number of attributes, one of the most fundamental of which is the property's newness for use and occupancy in the zone, as well as the definition of "qualified property" under ORS 285C.050(17).

(6) OAR 123-065-4600 to 123-065-4999 address other special matters.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050 - 285C.250 & 285C.260

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4050

Being and Operating a Business

For defining "business firm":

(1) As used in ORS 285C.050(3), "operating or conducting one or more trades or businesses" means to manage or direct commercial affairs, as evidenced by the following activities:

(a) Establishment of a place of business through ownership, renting or leasing;

(b) Approval to do business from the appropriate regulatory authorities, as documented by required licenses or permits;

(c) Capital investment or financing, including self-financing;

(d) Acquisition of property that is necessary to perform business operations;

(e) Maintenance of business records such as those related to sales, shipments, personnel or payroll;

(f) Solicitation of orders for goods, supplies or services from other businesses or business operations within the firm; and

(g) Ultimate pursuit of economic profits.

(2) As used in ORS 285C.050(3) and 285C.110, "municipal corporation" means any county, city, port district, school district, union high school district, community college district or any other public or quasi-public corporation, including but not limited to a municipal utility or dock commission, operated by a separate board or commission, or a people's utility district.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050 & 285C.110

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 13-1997, f. & cert. ef. 11-10-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0110; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4060

Employment and Employees

As used in ORS 285C.050(7):

(1) "Person" may mean two or more part-time employees who together perform and share a single job involving more than 32 hours of work per week by virtue of an established arrangement.

(2) "32 hours per week" is computed by taking the total number of hours over the course of a year, for which the person is reimbursed in the form of wage or salary, including but not limited to paid holidays, vacation and so forth, and dividing by 52.

(3) "Temporary or seasonal jobs" mean nonpermanent positions in which the persons filling them are hired, leased or contractually employed for less than a year's time, including but not limited to workers that are assigned to a qualified business firm by an external agency for periods of less than 12 consecutive months or on an ad hoc or as-needed basis.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.200 & 285C.210

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 13-1997, f. & cert. ef. 11-10-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0120; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4070

Modification of Existing Property

As defined under ORS 285C.050(12) and used in 285C.050 to 285C.250 and in this division of administrative rules, unless the context indicates otherwise, "modification" includes but is not limited to:

(1) Reconditioning, refurbishment, retrofitting or upgrade of real property machinery or equipment for purposes of ORS 285C.190; and

(2) The alteration or reconstruction of all or part of an existing building or structure, irrespective of any addition to the building or structure, consistent with one of the following terms, as used in ORS 285C.050(12) consistent with OAR 150-285C.180:

(a) "Modernization" meaning to adapt the building or structure to advances, ameliorations or updated practices by altering its style, technology, materials or engineering;

(b) "Remodeling" meaning to change the utilization, layout or appearance of the building or structure by reorganizing space and activities, achieving new operational objectives or correcting physical or economic deficiencies associated with the property; or

(c) "Renovation" meaning to restore, rebuild, redesign, repair or replace worn elements, so that the functionality, quality or attractiveness of the building or structure is equivalent to a former state.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.175, 285C.180 & 285C.190

Hist.: EDD 13-1997, f. & cert. ef. 11-10-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0130; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4100

Definitions

For purposes of OAR 123-065-4100 to 123-065-4199:

(1) **County Average Annual Wage** as defined under ORS 285C.050(4) and used in 285C.160 and 285C.165 means the average annual covered payroll per employee for all industries in the county, as estimated by the Employment Department, that is:

(a) Higher than that of any other county, in which any area of the enterprise zone is located, and thus not necessarily the county where the firm's investment in qualified property is located; and

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(b) Most recently available at the time when one of the following effectively occurs (whichever is latest):

(A) Application for authorization is approved under ORS 285C.140(6), pursuant to annual transition date determined by the Department;

(B) Statement of authorization renewal is submitted under ORS 285C.165(1) for purposes of 285C.160(4); or

(C) Exemption claim is initially filed under ORS 285C.220 and 285C.225 by an inactively authorized business firm under ORS 285C.165(4).

(2) Compensation as used in ORS 285C.160 means all remuneration in the form of wages, salary, overtime pay, shift differential, profit-sharing, bonuses, paid vacation or financial benefits such as life insurance, medical coverage and retirement plans, but it does not include sales commissions, free meals, club membership, workplace amenities, benefits mandated by federal, state or local law, and so forth.

(3) Affected Employees means persons, positions or jobs under ORS 285C.050(13), which align with the following criteria:

(a) Included as "employment of the firm" in accordance with OAR 123-065-4400; and

(b) New jobs that are filled for the first time:

(A) After the date of application for authorization under ORS 285C.140(1), even if a person filling the job is already employed by the eligible business firm in another position that is refilled within the zone; and

(B) On or before December 31 during the first tax year of the exemption.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.050, 285C.160 & 285C.165
Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0500; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4110

Compensation Standard

For purposes of ORS 285C.160:

(1) To qualify for the additional one or two years of exemption on qualified property in an enterprise zone outside the Metro/Portland area regional urban growth boundary:

(a) All of an eligible business firm's Affected Employees must on average receive Compensation of not less than 150 percent of the County Average Annual Wage; and

(b) This requirement must be satisfied for and during each year throughout the exemption's first three years and the additional one or two years.

(2) Under ORS 285C.160(3)(a)(A) or 285C.165, as described in OAR 123-065-4100(1)(b), the County Average Annual Wage is fixed during the entire enterprise zone exemption period.

(3) For purposes of section (1) of this rule, the regular yearlong Compensation (excluding bonuses and so forth) associated with any applicable position that is temporarily vacant due to unforeseen circumstances at any time during the year may be used in computing the annual average Compensation for all such Affected Employees.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.160, 285C.165 & 285C.240
Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 3-1996, f. & cert. ef. 4-2-96; Renumbered from OAR 123-065-0050; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0510; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4120

Written Agreement Between Sponsor and Eligible Business Firm

For purposes of the written agreement that is required between the sponsor of an enterprise zone and an eligible business firm under ORS 285C.160 and 285C.175(2)(b):

(1) To receive an additional one or two years of an enterprise zone exemption, the written agreement must be finalized no later than when approval of the application for authorization is fulfilled according to OAR 123-065-4345.

(2) Both the eligible business firm seeking an extended enterprise zone exemption and the sponsor of the zone (see OAR 123-065-2550) must formally authorize the written agreement.

(3) The written agreement shall specify whether the total period of abatement is four or five consecutive years.

(4) Notwithstanding section (1) of this rule, if the zone sponsor rejected a firm's request for an extended tax abatement, and the authorization application is subsequently approved, but the commencement of construction, modification or installation of qualified property has not yet occurred, then the sponsor may reverse its decision and enter into a written agreement, based on a resubmitted application under ORS 285C.140.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.140, 285C.160 & 285C.175
Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0520; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4130

Additional Reasonable Requirements

For the sponsor of an enterprise zone that approves an extended abatement and requests additional requirements of an eligible business firm under ORS 285C.160:

(1) All such additional requirements must be specified in the required written agreement between the eligible business firm and the zone sponsor as described in OAR 123-065-4120.

(2) Adherence to or satisfaction of such additional requirements shall in no way determine qualification for the first three years of an eligible business firm's enterprise zone exemption under ORS 285C.175.

(3) Such additional requirements shall conform to OAR 123-065-2500 to 123-065-2599.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.160 & 285C.240
Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0530; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4140

Appeal Rights

In regard to an extended abatement under ORS 285C.160 and the requirements therein, an eligible business firm shall have the same rights of appeal as provided elsewhere in ORS 285C.050 to 285C.250 for the authorization and qualification of an enterprise zone exemption, and no part of this division of administrative rules shall interfere with those rights, subject to the determination of appellate authorities.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.160 & 285C.175
Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0540; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4200

Definitions

(1) "Destination resort" as used in ORS 285C.070 and 285C.135(5)(c) (consistent with OAR 150-285C.180) means a facility with hotel accommodations at which visitors stay in order to access amenities connected to the resort, including but not limited to a development that satisfies the criteria under ORS 197.435 to 197.467.

(2) "Hotel" or "motel" as used in ORS 285C.070 and 285C.135(5)(c), consistent with ORS 699.005 (and OAR 150-285C.180), means a facility that:

(a) Offers rooms, suites of rooms, cabins, houses or other such units for transient lodging to persons typically from beyond the local area through direct overnight rental, time-share arrangements or other types of limited transactions;

(b) May include one or more visitor-oriented services, facilities or recreational activities, including but not limited to restaurants, laundry, conference rooms, golf course, swimming pool, tennis courts, ski runs, marinas or bicycle paths; and

(c) May be commonly described or labeled as an inn, resort, convention center or by other such names.

(3) "Separate" as used in ORS 285C.135(3) means a definitive and physical demarcation, including but not limited to a wall between eligible and ineligible activities, sufficient to distinguish the employees and qualified property pertaining to either activity or group of like activities.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.070 & 285C.135
Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0600; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4220

Basic Eligibility for Business Firms and Operations

For purposes of determining the eligibility of a business under ORS 285C.135(1) to be authorized or to qualify for an enterprise zone exemption under ORS 285C.175:

(1) The firm must (when qualified) produce, sell or provide goods, commodities, products, merchandise, work or services to other businesses or business operations, or be capable of doing so, through eligible activities.

(2) Such eligibility may be indicated if the firm's relevant operations are:

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- (a) Performed for internal purposes of the firm;
- (b) Reimbursed through sales to another business firm;
- (c) Equivalent to what is done for other business firms, even if the actual customer is a governmental agency, municipal corporation or non-profit corporation; or
- (d) Undertaken to create or add value to goods, products or services for ultimate exchange with persons or entities residing beyond the local economy.

(3) Besides manufacturing, assembly, fabrication, processing, shipping or storage, eligible activities include (subject to other provisions of ORS 285C.135) but are not limited to:

(a) Industrial processes or services such as cleaning, coating, curing, kiting, labeling, laminating, packaging, refining, smelting, sorting or treating;

(b) Generation or co-generation of electricity, steam or heat;

(c) Recycling of post-consumer or post-production materials or wastes;

(d) Nonretail, in-shop refurbishment or restoration of equipment or machinery;

(e) Maintenance service or repair work on vehicles, products, parts or devices, performed on a nonretail basis at a permanent location, facility or shop, including but not limited to warranty service contracted or paid for by the manufacturer;

(f) Technical/customer support that is performed for internal purposes of the firm or is contracted or paid for by a nonretail third party such as the distributor or manufacturer;

(g) Standardized product testing, quality control or laboratory work;

(h) Bulk clerical processing;

(i) Development of standardized computer software products;

(j) Printing or mass document production;

(k) Distribution;

(l) Wholesaling, which may include complex transactions for single-item purchases by other businesses of large equipment involving contracts, factory-ordered specifications or other attributes distinguishing the sale from retail; or

(m) Production of agricultural, mineral, timber or other primary goods or commodities.

(4) As a matter of principle, eligibility and ineligibility are mutually exclusive for purposes of ORS 285C.135, such that if a firm or an activity of the firm is eligible, it is 'not' ineligible, and to be not eligible, it must be ineligible.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0620; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4230

Ineligible Activities

For purposes of ORS 285C.135(2):

(1) The following activities are ineligible, and property used in these activities may not qualify for an enterprise zone exemption, regardless of the activity being performed for other businesses:

(a) Retail sales of goods or services;

(b) Retail food service or serving of meals;

(c) Tourism attractions or similar services;

(d) Entertainment or recreation provided directly to the patron or user;

(e) Child care or similar services;

(f) Provision of health care, medical services or similar services to patients;

(g) Professional services, such as accounting, communications, design, engineering, legal advice or management;

(h) Actuary, appraisal, banking, brokerage, extension of credit, insurance, investment, money lending or similar financial services;

(i) Leasing or management of real estate;

(j) Provision of residential housing for purchase or lease;

(k) Construction or modification of real property at the location where that real property is used or occupied;

(l) Installation of fixtures, machinery or equipment;

(m) Recreational vehicle parks; or

(n) Other similar activities.

(2) Notwithstanding OAR 123-065-4220, an activity is eligible in the following cases, despite being listed in:

(a) Subsection (1)(d) through (i) or (n) of this rule, in the case of a facility described and allowed by OAR 123-065-4280 (Headquarter Facilities);

(b) Subsection (1)(a), (d), (g), (h) or (n) of this rule, in the case of operations described and allowed by OAR 123-065-4270 (Call Centers);

(c) Subsection (1)(a) through (h) or (n) of this rule, in the case of Electronic Commerce operations, as described in OAR 123-065-7100, and located in an area designated as described in OAR 123-065-7200 to 123-065-7500; or

(d) Subsection (1)(a) through (e) or (n) of this rule, in the case of a hotel, motel or destination resort in an enterprise zone identified or described in OAR 123-065-4260, if the activity is:

(A) Located at the same general location as the hotel, motel or destination resort;

(B) Operated by the hotel, motel or destination resort; and

(C) Fifty percent or more of its receipts are derived from guests staying overnight at the hotel, motel or destination resort.

(3) A business firm is eligible, regardless of the presence within the enterprise zone of one or more activities listed in section (1) of this rule, if the requirements of OAR 123-065-4240 and 123-065-4250 are satisfied.

(4) Activities described in subsections (1)(b) through (i) or (n) of this rule (and the associated employees and property) are eligible, if performed:

(a) In direct support of an eligible business firm's operations, or as amenities for eligible employees/personnel;

(b) Within the same enterprise zone; and

(c) To support or benefit operations/personnel located mostly inside the zone, such that if more than 25 percent of the activity supports or benefits the firm's operations outside the zone in terms of person-time or costs, then the requirements of OAR 123-065-4280 for headquarter-type facilities must be fulfilled.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135 & 285C.185

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0630; EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4240

Eligible Business Firm with Ineligible Activities

For purposes of ORS 285C.135(3):

(1) A business firm is eligible and may qualify for an enterprise zone exemption:

(a) If the firm is, when qualified, engaged in an eligible activity in the enterprise zone;

(b) Provided that any ineligible activity of the firm is at a separate operation of the firm; and

(c) Regardless of the degree to which an ineligible activity represents the firm's main commercial pursuit.

(2) An eligible business firm's "employees of the firm [who] work a majority of their time in eligible operations," as used in ORS 285C.200(3)(b):

(a) Includes any employee who performs any of the firm's eligible activities as described in OAR 123-065-4220 for 50 percent or more of the time spent at the employee's job;

(b) Includes any employee whose work is predominantly concerned with the provision of direct administration or technical support to the eligible business firm's eligible activities within the enterprise zone, consistent with OAR 123-065-4230(4); and

(c) Excludes positions and persons dedicated primarily to ineligible activities such as those listed in OAR 123-065-4230(1).

(3) Any requirement of an eligible business firm to hire, maintain or compensate employees under ORS 285C.050 to 285C.250 applies only to employees "included" in section (2) of this rule that work at locations inside the enterprise zone (or within 30 miles as applicable).

(4) An eligible business firm or the local zone manager shall see that the authorization application indicates distinctions relevant to this rule, and the local zone manager shall be prepared to assist the firm and the county assessor in determining the property or portions of such property that qualify according to OAR 123-065-4325(3)(e)(A) and 123-065-4510(1).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135, 285C.200 & 285C.210

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0640; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4250

Gross Receipts Test

(1) A gross receipts test may be used in determining the eligibility of a business firm or business operation that partially involves an ineligible activity, but only if:

(a) There are Applicable Gross Receipts;

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(b) The firm is not eligible as described in OAR 123-065-4230(2); and

(c) For lack of definitive or physical separation, the ineligible activity cannot be effectively isolated from eligible activities.

(2) The business firm or operation passes the gross receipts test and may otherwise be eligible for authorization or qualification in the enterprise zone, if the ratio of Applicable Gross Receipts to Ineligible Receipts equals or exceeds 4.0.

(3) In order for this gross receipts test to be effective, the local zone manager shall see that the application for authorization includes:

(a) An explanation of the eligibility of the firm or operation consistent with this rule; and

(b) Arrangements to substantiate this for the firm's future qualification, as appropriate.

(4) Applicable Gross Receipts as used in this rule are based on:

(a) Sales revenue derived directly from a party external to the firm in exchange for goods, products, commodities, merchandise, work or services;

(b) Operations located entirely inside the enterprise zone;

(c) All activities of the firm within the enterprise zone;

(d) An annual total for the most recent fiscal year or calendar year; and

(e) The firm's commercial state of affairs, as realized when the firm is qualified for the property tax exemption being sought, which is estimated for purposes of the application for authorization.

(5) Ineligible Receipts as used in this rule are that subset of the same Applicable Gross Receipts that arise from an ineligible activity described in OAR 123-065-4230(1), including but not limited to receipts that entail:

(a) Consumption by an end-user that is a member of the general public;

(b) Sales directly to a household or individual that is neither another business firm nor operating as such; and

(c) No subsequent resale of the applicable goods or products by the firm's customer.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135 & 285C.140

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0650; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4260

Local Option for Hotels, Motels and Destination Resorts

(1) For purposes of eligibility under ORS 285C.135(5)(c) for an exemption under ORS 285C.175 (but not ORS 285C.170) on qualified property owned or leased and operated by a business firm as a hotel, motel or destination resort, the firm and the property must:

(a) Satisfy all applicable requirements of the enterprise zone; and

(b) Be located in a zone where such firms are eligible under ORS 285C.070 or section 56(1), chapter 662, Oregon Laws 2003, as described in section (2) or (3) of this rule.

(2) For subsection (1)(b) of this rule, allowable zones include at the time of the last amendment of this rule (subject to later revocation):

(a) The entire area of any one of the following 30 Enterprise Zones: Baker City/County, Bay Area, Cascade Locks/Hood River, CTUIR Tribal, Coquille Valley, Cottage Grove/Southern Lane County, Dallas/Independence, Grant County, Grants Pass Area, Grande Ronde, Harney County/Burns/Hines, Harrisburg, Huntington, Josephine Champion, Klamath Falls/Klamath County, Lakeview, Lower Columbia Maritime, Lower Umpqua, Malheur County, Prineville/Crook County, Roberts Creek, St. Helens/Columbia City, Sherman County, South Douglas County, South Santiam, Sutherlin/Oakland, Sweet Home, The Dalles/Wasco County, Tillamook or Willow Creek Valley; and

(b) The Lincoln County Enterprise Zone, except for areas in the incorporated territory of the cities of Depoe Bay and Lincoln City.

(3) For subsection (1)(b) of this rule, an allowable zone includes but is not limited to a future enterprise zone that is acknowledged by Director in the order of designation as having opted to exempt such qualified property under ORS 285C.070 as described in OAR 123-065-1520(7).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.070, 285C.135 & 285C.185

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4270

Call Centers

For purposes of ORS 285C.135(5)(a):

(1) A business firm and its operations are eligible, regardless of retail or financial services, if:

(a) They serve the firm's clients through computer, electronic, telephony or other telecommunication methods;

(b) Such customers of the firm's client are not contacted without some sort of prior elicitation, but rather the firm responds to an unsolicited order or other prior instruction, including but not limited to:

(A) Follow-up to pledge or expression of interest, which need not have been made to the firm itself;

(B) Checking with users of client-supplied goods or services, for example, to continue or renew recently expired membership, contract, etc.;

(C) Collection of voluntarily incurred dues, fees or other charges payable to the client; or

(D) Other comparable activities distinct from telemarketing; and

(c) No more than 10 percent of the customers or business transactions come from inside the local calling area, in which telephone calls are normally made to and from the firm's location in the enterprise zone without long distance telephone charges.

(2) The percentage in subsection (1)(c) of this rule is:

(a) First substantiated by a written explanation of the proposed operations by the firm or local zone manager in the application for authorization;

(b) Not predicated on the actual transaction or customer communication being conducted through a paid telephone call, but only on relative location, as if it were;

(c) Calculated by dividing the number of customers or transactions in the local calling area by the firm's total, arising from the operations in the zone; and

(d) Not dependent on precise calculation or verification, if the generally regional or national extent of the firm's activities allow for reasonable assumption of compliance, otherwise the firm shall provide specific evidence thereof.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4280

Headquarter Facilities

For purposes of ORS 285C.135(5)(b):

(1) A business firm and its operations are eligible, regardless of retail, financial, professional or other such ineligible activities, if:

(a) The business firm is operating at two or more sites or in significant ways outside of the enterprise zone;

(b) The operations in the zone support or serve the firm's other operations throughout this state or throughout a multiple-state or larger region; and

(c) In approving the application for authorization, the local zone manager includes a formal finding of the sponsor under ORS 285C.140(7), consistent with section (2) of this rule.

(2) The formal finding for subsection (1)(c) of this rule shall:

(a) Describe how the proposed investment and the business firm will satisfy subsections (1)(a) and (b) of this rule, including indications of applicable services, relevant region and the relationship among intra-firm operations;

(b) State that the proposed investment is significant for the enterprise zone and the local economy; and

(c) Succinctly explain the reasons for this significance, such as the following:

(A) Size of the firm's anticipated operations relative to local measures of commerce or economic size;

(B) Relative quantity or type of new employees or job opportunities associated with the investment;

(C) Critical use of special sites, diversification of local economy or benefits for other business firms;

(D) Enhancement or fulfillment of strategic, marketing or visibility objectives of the zone; or

(E) Immediate impacts of investment.

(3) As required under ORS 285C.180(2)(g), the business firm may not qualify for the exemption under ORS 285C.175, if the proposed investment as described in section (2) of this rule does not essentially conform to the actual investment in qualified property.

(4) The local zone manager may modify the formal finding prior to an authorized business firm qualifying for the exemption.

(5) For purposes of requirements described in OAR 123-065-4400 to 123-065-4499, as provided under ORS 285C.200(7)(b)(B), the employees working at a facility that is eligible only as described in this rule shall be counted apart from all other eligible employees of the firm.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135, 285C.140, 285C.180 & 285C.200

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

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123-065-4300

Definitions

(1) For purposes of OAR 123-065-4300 to 123-065-4399:

(a) **Application** means the latest revision of the Department of Revenue form 150-303-029, Oregon Enterprise Zone Authorization Application, inclusive of attachments.

(b) **Approval Form** means the latest revision of the Department of Revenue form 150-303-082, **Oregon Enterprise Zone Authorization Approval**.

(c) Firm/applicant means a business firm that is seeking to have an Application approved in order to be authorized in an enterprise zone as defined in ORS 285C.050(2).

(2) As used in ORS 285C.140(1), "eligible employees" means employees engaged in eligible activities or operations as described in OAR 123-065-4200 to 123-065-4299, who will be associated with the proposed investment or investments, for which the eligible business firm is applying for authorization.

(3) As used in ORS 285C.140(2), "estimate" and "estimated" mean current expectations of the owners, managers and executives of an eligible business firm, based on the best information available at the time, and shall not be construed as binding in and of themselves.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0700; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4310

Applying for Authorization

For purposes of ORS 285C.140(1):

(1) In applying for authorization with the sponsor of an enterprise zone and the county assessor, the Firm/applicant shall:

(a) Fill out the Application as completely as the Firm/applicant is capable of doing;

(b) Have the Application signed and dated by an owner, executive officer or legally authorized representative of such an owner or officer of the Firm/applicant; and

(c) Submit the Application by mail or otherwise to the local zone manager.

(2) In order for the Application of the Firm/applicant to be accepted for approval, all of the actions described in section (1) of this rule must be accomplished before:

(a) The Firm/applicant's hiring of any eligible employee to qualify under ORS 285C.200; and

(b) Any physical work, such as construction or reconstruction of a building or structure, construction of an addition or modifications to an existing building or structure, or installation of machinery or equipment, comprising all or part of the qualified property, for which the Firm/applicant proposes to claim the exemption under ORS 285C.175.

(3) Physical work for purposes of subsection (2)(b) of this rule includes site preparation that leads directly to construction, modification or installation of qualified property, such as fill, grading or leveling on raw land or the installation of underground utilities and utility connections, except for offsite development.

(4) A faxed, e-mailed or similarly furnished copy of the Application may be used in lieu of subsection (1)(c) of this rule, if the copy is:

(a) Received by the zone sponsor prior to the time described in section (2) of this rule;

(b) Promptly followed up by a hard-copy, signed original to the local zone manager; and

(c) Executed, or accompanied by evidence that the Firm/applicant stands behind it.

(5) Conformity with this rule may be verified, as necessary, by:

(a) Final documents for transfer of ownership, sale closing or execution of a lease;

(b) Building permit or contract;

(c) Written statement/affidavit from someone other than an owner or employee of the Firm/applicant; or

(d) Similar forms of written, independently substantiated proof.

(6) The Firm/applicant shall pay an authorization filing fee, if directed to do so by the local zone manager, as described in OAR 123-065-0220.

(7) If an Application is not timely received by the local zone manager as described in this rule, but the Firm/applicant produces dated evidence to the satisfaction of the zone manager and assessor that the Application was sent in a timely manner, then the Application may be accepted.

(8) In the event that an Application is appropriately replaced under ORS 285C.140(3) or otherwise, the original submission date of the previously completed Application may be used to satisfy sections (1) and (2) of this rule if the originally proposed investment would have served comparable business purposes.

(9) Exceptions to section (2) of this rule are listed in OAR 123-065-4313.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.140(1)(c) & 140(12)(a)

Stats. Implemented: ORS 285C.140 & 285C.145

Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 3-1996, f. & cert. ef. 4-2-96; Renumbered from OAR 123-065-0060; EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0710; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4313

Late Application Submission

For purposes of applying for authorization in an enterprise zone:

(1) An Application may be accepted after certain physical work, in accordance with OAR 150-285C.180 (3)(b), and/or if the physical work consists only of:

(a) Demolition, cleanup and so forth;

(b) On-site delivery, storage or upkeep of qualified property prior to construction/installation; or

(c) Construction or the like that occurred and completely ceased six months or longer beforehand (insofar as any such unfinished property was not assessed before the effective date of the enterprise zone's designation or relevant boundary change).

(2) The Application may be accepted after the commencement of hiring or physical work (but not later than December 31 immediately before the first year in which the exemption under ORS 285C.175 is initially claimed) if it:

(a) Is approved in accordance with OAR 123-065-4315 for a building/structure that is bought or leased by the Firm/applicant; or

(b) Replaces a previously submitted Application, consistent with OAR 123-065-4310(8), for any of the following reasons:

(A) To account for a change in the Firm/applicant's name, nature and so forth;

(B) To recognize a change in ownership of property as described in OAR 123-065-4380; or

(C) To effect extensive amendment or corrections to information in the original Application, including but not limited to a change in the location of qualified property within the same zone.

(3) Under ORS 285C.140(11) and (12), an Application may be accepted after the commencement of hiring or physical work, if it is approved before the qualified property is subject to property taxes:

(a) As specifically allowed in an administrative rule in this division or in chapter 150; or

(b) Pursuant to a waiver issued by the Department of Revenue consistent with OAR 150-285C.140(12).

(4) Physical work or hiring may even be completed when the Application is submitted as described in section (2) or (3) of this rule.

(5) This rule does not:

(a) Necessarily allow property previously assessed for taxation inside the zone to be exempt under ORS 285C.170 or 285C.175 (even if that is possible for other reasons, see OAR 123-065-4540).

(b) Relieve the Firm/applicant of any requirement, procedure, deadline or the like related to:

(A) Being authorized under ORS 285C.140;

(B) Renewing the authorization under ORS 285C.165; or

(C) Claiming an exemption under ORS 285C.220.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.140(12)(a)

Stats. Implemented: ORS 285C.140 & 285C.145

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4315

Authorization with Newly Acquired Buildings

A qualified building, structure or portion thereof may receive an enterprise zone exemption even if construction, reconstruction or modifications commenced prior to submission of the relevant Application, such that under ORS 285C.145(2):

(1) The submission and approval of the Application must occur before the Firm/applicant begins to actually use or occupy any portion of the building or structure for commercial operations.

(2) The Firm/applicant shall include a copy of an executed lease or purchase agreement for the qualified building or structure with the Application, in order for the Application to be approved.

(3) This rule does not apply to the following:

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(a) Any machinery or equipment, in that installation of machinery or equipment must commence after submission of the Application, except for newly installed real property machinery or equipment that is included in the same lease or sales contract as the building or structure;

(b) Buildings or structures that are or were actually owned or leased by the Firm/applicant at any time before the commencement of construction, reconstruction or modifications; or

(c) A Firm/applicant that has any familial, employment, corporate or other such entity relationship with the (prior) owner of the building or structure.

(4) A building or structure that is authorized as described in this rule may be granted the exemption under ORS 285C.175, even though it had been previously assessed for taxation, if:

(a) Assessment did not precede the effective date of the enterprise zone's designation or relevant boundary change;

(b) The building, structure or applicable portion thereof has not previously been used or occupied; and

(c) All other requirements under ORS 285C.175 and 285C.180 are met.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.668(1)

Stats. Implemented: ORS 285B.701 & 285B.719

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98;

EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0750; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4318

Amending the Application

Whether before or after approval under ORS 285C.140(6), an Application may be amended:

(1) Such amendment by the Firm/applicant through written explanation to the local zone manager and county assessor is strongly encouraged, whenever information in the submitted Application is significantly inaccurate because of:

(a) An inadvertent error or omission;

(b) A change in plans; or

(c) Similar reason.

(2) An amendment is not usually necessary to secure an exemption under ORS 285C.170 or 285C.175 on qualified property, as information in the Application about property and timing does not serve a regulatory function, but it does need to be revised if it:

(a) Materially misstates the existing employment of the firm in the zone (or at sites within 30 miles from which jobs will be transferred) such that a revised, lower figure must be clearly substantiated;

(b) Gives the wrong location for the property;

(c) Describes or estimates the value of qualified property in a way that will be substantially inconsistent with the actual investment, but only in relation to OAR 123-065-4280(3) or 123-065-8400(2); or

(d) Does not in any way identify a general type of otherwise qualified property that will be part of the actual investment, per 123-065-4355(2) and (3).

(3) Notwithstanding the fact that failure to amend the Application may prevent an exemption under ORS 285C.175 on all or only certain otherwise qualified property, no amendment may occur after December 31 immediately before the first year, in which the exemption is initially claimed.

(4) An authorization renewal statement under ORS 285C.165 shall include appropriate revisions to information in the Application, especially with respect to anticipated timing for the investment.

(5) Once the Application is approved, and the Firm/applicant is authorized, such an amendment may not be used to make or alter a determination, waiver, extension or the like under ORS 285C.150, 285C.155, 285C.160, 285C.200(2) and 285C.205.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.145, 285C.165, 285C.180 & 285C.220

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4320

Processing of Application by Local Zone Manager

Following submission of an Application:

(1) The local zone manager may collect an authorization filing fee as described in OAR 123-065-0220.

(2) The local zone manager shall deny the Application if finding that:

(a) The Firm/applicant does not fulfill any basis for eligibility under ORS 285C.135;

(b) The Firm/applicant is unwilling or unable to unambiguously commit to an action/obligation as required under ORS 285C.140(2);

(c) The Application was submitted too late as described in OAR 123-065-4310 and 123-065-4313;

(d) Location of proposed qualified property is outside the enterprise zone boundary and no relevant boundary change is pending (or possible); or

(e) Other reason that precludes authorization.

(3) When authorization is denied per section (2) of this rule, the local zone manager shall within 15 business days of the denial:

(a) Refund any authorization filing fee that was paid;

(b) Write a letter to the Firm/applicant that justifies the denial;

(c) Send copies of the letter to the county assessor, Department of Revenue and the Department; and

(d) Ensure that the letter:

(A) Is sent to the Firm/applicant through certified mail or in such a way that the date of receipt can be verified; and

(B) Contains information on the Firm/applicant's rights of appeal under ORS 305.404 to 305.560 to the Magistrate Division of the Oregon Tax Court.

(4) If there is no apparent reason to deny authorization, per section (2) of this rule, then the local zone manager shall conduct a preauthorization consultation and prepare a summary about it, as described in OAR 123-065-4323 and 123-065-4325.

(5) With respect to a sponsor's failing to authorize under ORS 285C.140(9), a Firm/applicant may proceed with an appeal after 30 days following the submission of the Application, if no formal action is yet to be taken as described in this rule or in response to special circumstances, such as those indicated in OAR 123-065-4340(4) and (5).

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98;

EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0720; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4323

Pre-Approval Consultations

The preauthorization consultation under ORS 285C.140(4) is a trouble-shooting exercise to increase the certainty of a Firm/applicant's compliance with enterprise zone requirements through anticipatory issue-identification and preparations for verification:

(1) The consultation must occur after:

(a) A substantially complete Application is available for review; and

(b) Providing notice and reasonable opportunity for the county assessor's office to participate, according to local practices and understandings.

(2) The consultation may be:

(a) Conducted informally, by conference call and so forth for purposes of convenience and expediency;

(b) Handled by an assistant or designee of the local zone manager;

(c) Accomplished without actual representation by the county assessor; or

(d) Undertaken (and summarized) in the same context and more or less simultaneously with the completion and submission of the Application and subsequent processing of the Approval Form.

(3) Besides concerns about the Firm/applicant's eligibility or ability to be authorized, the consultation shall address matters affecting future qualification, including but not limited to the following:

(a) Request for extended abatement or other special cases as described in OAR 123-065-4328(2) or (3) or 123-065-4340(4) or (5), if germane;

(b) Confirmation of the computed annual average employment prior to the Application's submission;

(c) Level of confidence that new hiring (and compensation if applicable) will satisfy minimum requirements for employment of the firm in the zone:

(A) To initially qualify; and

(B) Throughout the exemption period;

(d) Arrangements for Firm/applicant to enter into a first-source hiring agreement under ORS 285C.215 as described in division 070 of these administrative rules;

(e) Adequacy of descriptions of proposed qualified property for purposes of OAR 123-065-4355(1) to (3);

(f) Specific, relevant restrictions for what comprises 'qualified property' that may be exempt, such as cost minima or required lease provisions; and

(g) Submissions or filings under ORS 285C.165, 285C.170, 285C.220 and 285C.225 to:

(A) Renew unused authorization after two years;

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(B) Exempt qualified property assessed while in the process of construction/installation (see OAR 123-065-4800); and

(C) Claim exemption once the qualified property is placed in service.

(4) The local zone manager/designee shall also contact and consult with the Department, if any of the following (potential) problems surface:

(a) The investment in the zone could relate to employment being reduced at or transferred from another place in this state outside that zone;

(b) Firm/applicant might wish/need to delay or avoid entering into a first-source hiring agreement;

(c) Exemption is jeopardized by untimely designation or termination of the zone;

(d) Site is outside current zone boundary, whether or not a boundary change is possible or pending; or

(e) Any especially unusual situation.

(5) If the Firm/applicant's proposed qualified property would be subject to central assessment as 'utility property,' the local zone manager or assessor shall contact the Department of Revenue and advise the Firm/applicant that no exemption applies while construction is underway.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.150, 285C.155, 285C.160, 285C.180, 285C.185, 285C.200, 285C.210, 285C.215, 285C.220, 285C.225 & 285C.230

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4325

Written Summation

For the summary under ORS 285C.140(5), pursuant to the preauthorization consultation:

(1) The local zone manager or designee shall prepare a brief record of the consultation and see that it attached to or included with the Application.

(2) For most proposed enterprise zone investments that are technical-ly unremarkable and are fully expected to generate ample new employment, the summary will need to do little more than indicate the apparent absence of significant issues, as well as when and with whom the consultation occurred.

(3) It is recommended that the summary always mention the checking of certain critical issues, including but not limited to the following:

(a) The accuracy, contiguity and in-zone location of the site identified in the Application;

(b) Firm/applicant's awareness and (non-) interest in an extended tax abatement under ORS 285C.160;

(c) Degree to which the sufficiency of employment will be problematic or really rather obvious;

(d) Expected timing and process for obtaining a first source hiring agreement (and that county assessor will be notified otherwise); and

(e) Whether or not only a portion of a building or structure will be subject to exemption under ORS 285C.180(5), because parts/units of the property will:

(A) House ineligible activities;

(B) Have separate lease or ownership; or

(C) Be used/occupied in different times or ways.

(4) For any unusual circumstance, concern about compliance or the like, as identified in the consultation, the summary shall note relevant follow-up, duties and contingencies, including but not limited to:

(a) Reason for special attention;

(b) Next steps, subsequent process and so forth;

(c) Necessary data, documentation or events;

(d) Who does what; and

(e) When steps, corroboration or communications (to the county assessor's office) are expected to occur, such as before or at the time:

(A) Approval Form is finalized;

(B) Construction, modification or installation of property is either commenced or completed; or

(C) Filing under ORS 285C.220/285C.225.

(5) For example, if there is some doubt about the future increase in employment of the Firm/applicant, the summary might run through the following:

(a) How the expected increase could be close to or difficult to discern relative to required minimum;

(b) The records or reports that the Firm/applicant will assemble or produce to demonstrate its eligible employment in the zone:

(A) After authorization but on or before April 1 of the first exemption year; and

(B) As an annual average during exemption period;

(c) When and how the Firm/applicant shall share such information with the local zone manager; and

(d) Further communication or confirmation by the local zone manager or Firm/applicant, as the county assessor could/would request or need with the filing of exemption claims.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.150, 285C.155, 285C.160, 285C.180, 285C.185, 285C.200, 285C.210, 285C.215, 285C.220, 285C.225 & 285C.230

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4328

Approval by Local Zone Manager

After the preauthorization consultation and the attachment of the written summary:

(1) The local zone manager shall approve the Application in order to authorize the Firm/applicant under ORS 285C.140(6), unless determining to deny it as described in OAR 123-065-4320(2) and (3).

(2) For any special case of eligibility, the local zone manager shall address relevant matters as described in OAR 123-065-4240 or shall attach to the Application any finding or explanation needed for OAR 123-065-4250, 123-065-4270 or 123-065-4280.

(3) If the Firm/applicant's proposed investment in qualified property will be located in an urban enterprise zone that imposes additional conditions under ORS 285C.150 in effect at the time of authorization, the local zone manager shall:

(a) Approve the Firm/applicant for authorization, only if the Firm/applicant has made acceptable commitments to satisfy such conditions; and

(b) Include a standardized attachment to the Application documenting the commitments of the Firm/applicant as described in OAR 123-065-0230.

(4) Within five business days of approval (subject to any relevant step in section (2) or (3) of this rule), the local zone manager shall:

(a) Fill out and sign the Approval Form except for the section pertaining to the county assessor;

(b) See that the county assessor is furnished with the Approval Form and a copy of the Application (with all current attachments);

(c) Notify the Firm/applicant of the status of the Application, as appropriate; and

(d) Inform the local contact agency for the first-source hiring agreement as described in division 070 of this chapter of administrative rules.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135, 285C.140, 285C.150 & 285C.215

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4330

Processing by County Assessor

For purposes of completing the Approval Form:

(1) The county assessor shall approve or deny the Application in accordance with ORS 285C.140(6) within a reasonable period after receiving the Approval Form from the local zone manager.

(2) Within five business days of taking action as described in section (1) of this rule, the county assessor shall:

(a) Enter a signature and date in the appropriate place on the Approval Form;

(b) Verify the information on the Approval Form as it pertains to future steps required for the eligible business Firm/applicant to qualify;

(c) Remove the appropriate colored copy from the Approval Form for the assessor's records; and

(d) Return the remainder of the Approval Form to the local zone manager.

(3) In the event that authorization is denied for any reason as described in OAR 123-065-4320(2), the county assessor shall include a written explanation with the materials returned to the local zone manager.

(4) For purposes of this rule, authorized county assessment staff may act on behalf of the county assessor.

(5) The county assessor may refuse to approve the Application on condition of:

(a) Seeing a finalized version of any applicable item as described in OAR 123-065-4340(5); or

(b) Receiving other reasonably critical information from the Firm/applicant or zone sponsor, including but not limited to the resolution of a question or concern that arose in the preauthorization consultation.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0730; EDD 1-2005, f. & cert. ef. 2-25-05

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123-065-4340

Final Processing of Application

With the completion of an Approval Form by both the local zone manager and county assessor:

(1) The local zone manager shall have a photocopy made of the Approval Form (with original signatures) for the records of the enterprise zone sponsor.

(2) Within five business days, the local zone manager shall see that the Firm/applicant is informed of the action taken by the county assessor relative to OAR 123-065-4330(1).

(3) If the county assessor denied the Firm/applicant's authorization, the local zone manager or county assessor shall within 15 business days of the denial:

(a) Refund any authorization filing fee that was paid.

(b) Have the respective top and colored copies of the Approval Form and the county assessor's written explanation distributed to the:

(A) Firm/applicant;

(B) Department of Revenue;

(C) Department; and

(D) Local contact agency for the first-source hiring agreement.

(c) Ensure that the information for paragraph (b)(A) of this section is sent to the Firm/applicant through certified mail or in such a way that the date of receipt can be verified.

(4) If the Firm/applicant requested an extended period of tax abatement from the sponsor of the enterprise zone under ORS 285C.160, the local zone manager shall:

(a) Delay final processing or distribution of the Application and Approval Form until either the written agreement has been approved as described in OAR 123-065-4120 or the zone sponsor has rejected the request;

(b) Fill in the relevant space in the Application if the request is accepted; and

(c) Provide a copy of the Application as revised per subsection (b) of this section to the Firm/applicant and (as necessary) to the county assessor.

(5) The local zone manager shall have copies of the following documents attached to the Application and (as necessary) provided to the county assessor:

(a) Written agreement between the sponsor of the enterprise zone and the Firm/applicant, if the period of property tax abatement is to be longer than three years under ORS 285C.160 and 285C.175(2)(b);

(b) Resolution or resolutions of the governing body or bodies of the zone sponsor under ORS 285C.155 for a local waiver of the employment increase requirement (see OAR 123-065-4450); or

(c) Executed lease or purchase agreement if necessary for OAR 123-065-4315.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.145, 285C.155 & 285C.160

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98;

EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0740; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4345

Authorization

Subject to both the local zone manager and county assessor approving the application, and to any special issue related to OAR 123-065-4325 or 123-065-4340(4) and (5) being wrapped up:

(1) The local zone manager shall have the respective top and colored copies of the Approval Form distributed in a timely fashion to the:

(a) Firm/applicant;

(b) Department of Revenue;

(c) Department; and

(d) Local contact agency for the first-source hiring agreement.

(2) Distributions for subsection (1)(a), (b) or (c) shall include copies of the Application and attachments as appropriate or requested.

(3) For purposes of ORS 285C.050 to 285C.250 and this division of administrative rules, the Firm/applicant is not officially authorized until fulfillment of section (1) of this rule.

(4) To receive an exemption under ORS 285C.170 while work is in progress, such authorization must have occurred, although the Firm/applicant may apply as described in OAR 123-065-4800 and receive exemption under ORS 307.330.

(5) In order for the eligible business firm to be granted the exemption under ORS 285C.175:

(a) The zone sponsor/county assessor shall authorize the firm before it files its initial claim for exemption with property schedule under ORS 285C.220 and 285C.225.

(b) Such an exemption claim may be provisionally filed pending authorization that has been delayed for extenuating circumstances that are no fault of the Firm/applicant, but authorization must occur before the firm may qualify for the exemption.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.170, 285C.175, 285C.220, 285C.225

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4355

Authorization's Effect on Exemption

Authorization is primarily intended to establish and address critical issues related to a Firm/applicant's knowledge of the enterprise zone, the eligibility of its business activity, existing employment level and so forth, and as such, property is not being 'authorized' for exemption under ORS 285C.170 or 285C.175. However:

(1) Under ORS 285C.180(2)(e), otherwise qualified property may be exempt only if located as indicated in the Application, such that this location:

(a) Must represent a single area of operation;

(b) May encompass a complex of contiguous lots or parcels of land or a comparably proximate set of multiple sites; and

(c) Must be accurately and inclusively identified.

(2) An authorized business firm's exemption is not normally restricted by what is or is not contained in the Application's description or estimated value of qualified property to be constructed, added, modified or installed, but there are two exceptions where the description really matters:

(a) Special cases in relation to OAR 123-065-4280(3) or 123-065-8400(2), in which substantial consistency is required; and

(b) As described in section (3) of this rule (except for qualified property of a firm engaged in electronic commerce in a so-designated area).

(3) Under ORS 285C.180(2)(f) and consistent with section (2) of this rule, the following property may not be exempt, if not at least generically identified in the Application's description:

(a) A distinct building or structure for which the cost of construction, reconstruction or modifications is \$50,000 or more.

(b) A basic category of property, regardless of cost, in that something must be included in terms of:

(A) Newly constructed buildings/structures;

(B) Additions to or modifications to existing buildings, structures or portions thereof;

(C) Newly installed real property machinery or equipment;

(D) Modifications to real property machinery or equipment under ORS 285C.190; or

(E) Newly installed personal property.

(4) For purposes of this rule, information in the Application shall be used either as originally submitted or as amended consistent with OAR 123-065-4318.

(5) The Application provides for the exemption of qualified property, as otherwise allowed by this rule, over not more than three successive years under ORS 285C.225(2)(b), such that:

(a) Once an exemption is claimed and granted pursuant to the Application, subsequent exemptions may be claimed pursuant to the same Application only in one or both of the next two years;

(b) Such exempt additional qualified property must be placed in service during the first or second year of the initial exemption;

(c) Additional qualified property covered by each such subsequent exemption must be included in a property schedule filed with the exemption claim for that and the prior property; and

(d) Each exemption as described in this section shall enjoy its own exemption period of equal length, and they shall overlap.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.170, 285C.175, 285C.180, 285C.185, 285C.190, 285C.220 & 285C.225

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4365

Further Applications

Although amendment of a single existing Application as described in OAR 123-065-4218 is encouraged to minimize the number of Applications that an authorized business firm has outstanding, a firm may be concurrently approved for two or more Applications. Moreover:

(1) Authorization under another Application is necessary for situations that may not be dealt with by a single Application, as described in OAR 123-065-4355, such as investments in qualified property:

(a) At more than one distinct location in the enterprise zone;

(b) Beyond the three-year time frame; or

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(c) That are not adequately described in terms of representation by a basic class of property (or where substantial consistency is demanded) and the first assessment date for the initial exemption has occurred.

(2) For any subsequent Application even if for proposed property at the same site:

(a) It must be timely submitted, as described in OAR 123-065-4310 and 123-065-4313; and

(b) It establishes unique employment criteria under ORS 285C.200 and 285C.210 for exempting qualified property, with which it is specifically associated (see OAR 123-065-4480).

(3) Neither OAR 123-065-4318, 123-065-4355 nor this rule shall be construed in any way as prohibiting an exemption on qualified property of a properly authorized business firm as otherwise allowed under ORS 285C.050 to 285C.250.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.140, 285C.170, 285C.175, 285C.180, 285C.185, 285C.190, 285C.220 & 285C.225
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4375

Renewal of Active Status

Under ORS 285C.165 an eligible business firm's authorization in an enterprise zone becomes 'inactive' after more than two years, such that:

(1) The authorization remains active for:

(a) The remainder of the year after the Application is fully approved as described in OAR 123-065-4345;

(b) The two-year period that immediately follows; and

(c) Each two-year period directly thereafter, subject to a statement of renewal as described in subsection (2)(b) of this rule.

(2) Authorization remains 'active' if immediately after the timeframe, as described in section (1) of this rule, the actively authorized business firm:

(a) Files under ORS 285C.220 and 285C.225 to claim the exemption on qualified property that was placed in service during such timeframe, pursuant to the Application; or

(b) Submits a written statement between January 1 and April 1 (as promptly received by both the local zone manager and the county assessor's office) that:

(A) Comes from and is endorsed by the firm consistent with authority required for Application;

(B) Says/affirms that the firm still intends to complete its proposed investment in qualified property inside the zone and to claim the exemption;

(C) Revises or amends information in the Application with respect to at least the expected timing of investment activities; and

(D) Formally accepts a resetting of the county average annual wage applicable to any compensation standard as described in OAR 123-065-4100(1)(b)(B).

(3) An inactively authorized business firm retains its right to claim the exemption after the timeframe described in section (1) of this rule, but letting active status lapse has the following consequences:

(a) The claim must be accompanied by the filing fee under ORS 285C.165(3); and

(b) The county average annual wage applicable to any compensation standard is reset as described in OAR 123-065-4100(1)(b)(C).

(4) Moreover, an inactively authorized business firm may not receive exemption under ORS 285C.170, while qualified property is in the process of construction, modification or installation, but it may still seek exemption under applicably comparable provisions of ORS 307.330 and 307.340.

(5) This rule no longer applies once:

(a) Exemption is granted under ORS 285C.175; or

(b) The zone terminates under ORS 285C.245 (see OAR 123-065-4600 to 123-065-4649).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.140, 285C.170, 285C.175, 285C.180, 285C.185, 285C.190, 285C.220 & 285C.225
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4380

Selling or Leasing of Property by Precertified Firms

(1) If ownership of an authorized business firm changes hands, the relevant rights and requirements of authorization may be automatically transferred along with ownership of the firm, regardless of a change in the name or mailing address of the firm.

(2) Subject to amendment of the Application, an eligible business firm that purchases or leases qualified property that was owned or leased by an actively authorized business firm may claim the exemption under ORS 285C.220 and 285C.225.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.140, 285C.175, 285C.220 & 285C.225
Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0780; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4400

Definitions

(1) As used in ORS 285C.050 to 285C.250, "employee" means a position or person under ORS 285C.050(7), as explicated in OAR 123-065-4060 (and not otherwise excluded by section (2) of this rule), who:

(a) Is employed directly by the eligible business firm as defined in ORS 285C.050(6); or

(b) Works for and was individually selected by the firm, but whose services are retained through a lease or contract with the person or third-party employer.

(2) As used in ORS 285C.200 and 285C.210, "employees of the firm" or "employment of the firm" includes employees except for those who are:

(a) Working 32 hours or less per week;

(b) Hired, leased or contracted for on a seasonal basis or for less than a year's time;

(c) Expected to be temporarily employed with the firm, including but not limited to persons acquired and receiving compensation through an outside agency on a short-term or as-needed basis;

(d) Engaged solely in the construction, modification or installation of qualified property;

(e) Regularly performing their work for the firm at a site located outside the boundary of the enterprise zone (For purposes of OAR 123-065-4420(5) or 123-065-4430(5), though, all employees at relevant sites within 30 miles of the zone boundary are considered); or

(f) Spending the majority of their time working in ineligible operations that:

(A) Are not associated with permitted activities described in OAR 123-065-4230(2); or

(B) Do not directly support eligible operations of the firm consistent with OAR 123-065-4230(4).

(3) Consistent with subsection (2) of this rule, only persons indefinitely hired for a permanent position that exists year-around at an eligible business firm's operations in the enterprise zone are normally counted. However, for purposes of OAR 123-065-4420 or 123-065-4430, temporary workers filling permanent positions may be counted, if the county assessor and the local zone manager conclude that:

(a) The firm is making every reasonable effort to fill such positions with permanent, regular hires; and

(b) The temporary workers and other potentially available job applicants are not hired permanently by the firm, because they do not meet reasonable minimum hiring standards of the firm, such as a high school diploma or equivalency.

(4) For purposes of OAR 123-065-4400 to 123-065-4499 (see OAR 123-065-4410):

(a) Annual Employment means the employment of the firm as averaged over the course of an assessment (calendar) year of exemption under ORS 285C.175.

(b) Claim Employment means the actual employment of the firm on the date when an exemption claim is filed under ORS 285C.220 or the corresponding April 1, whichever is earlier.

(c) Existing Employment means the employment of the firm as averaged over the 12 months preceding the date on which the authorization application is submitted under ORS 285C.140.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.050, 285C.200 & 285C.210
Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0800; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4410

Computation of Average Employment

(1) Annual Employment or Existing Employment is calculated such that:

(a) The actual employment of the firm at the end of each period (such as pay periods, calendar months or quarters of a year) that concludes during either the assessment year or the 12-month interval before the application for authorization shall be summed and then divided by the total number of periods.

(b) Periods longer than a quarter of a year may not be used in averaging employment, and such quarters of a year that may be used shall begin on the first of January, April, July and October.

(c) Results are rounded to a whole number equal to one or more.

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(2) For purposes of determining Existing Employment relative to the submission of the application for authorization:

(a) The time when applicable physical work began shall be used instead of the submission date, whenever appropriate or necessary for special situations arising with OAR 123-065-4310 and 123-065-4313 other than OAR 123-065-4315.

(b) If such physical work has not yet begun, an authorized business firm may submit a replacement authorization application to establish a lower level of Existing Employment; otherwise, the number from the original submission date must be used.

(c) The computed level may be revised to correct for a miscalculation as described in OAR 123-065-4318, including but not limited to erroneous counting of part-time, temporary, seasonal or ineligible employees.

(d) After the first (January-1) assessment date for exemption under ORS 285C.175, Existing Employment may be altered only to correct for a gross error, subject to a formal finding of good cause by the Department.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.140, 285C.200 & 285C.210
Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0810; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4420

Employment Requirements to Qualify

In order to receive and begin an exemption from taxation on qualified property in an enterprise zone under ORS 285C.175, an authorized business firm must qualify by filing under ORS 285C.220 and 285C.225 (as described in OAR 123-065-4560), such that:

(1) The initial Claim Employment must equal or exceed the greater of one plus or 1.1 times the Existing Employment. (If the actual Claim Employment is insufficient, the requirement under ORS 285C.200(1)(c) is still met if a sufficiently high level of employment was achieved prior to January 1 but after the application of authorization, as explained in an attachment to the claim form)

(2) For a subsequent exemption on additional qualified property pursuant to the same authorization application, as described in OAR 123-065-4355(5), the requirement of section (1) of this rule is already satisfied and does not need to be met again.

(3) Required employment levels may be satisfied only through newly created jobs, which do not include any employees associated with a merger with another business firm or the purchase of another firm's operations or property, except for positions of the other firm that were vacant for more than 60 days at the time of the purchase or merger and were otherwise not reasonably expected to be reinstated.

(4) If section (1) of this rule is not satisfied, then the county assessor shall deny the exemption claim and not grant any exemption under ORS 285C.175 on qualified property of the authorized business firm, unless the requirement was waived by the sponsor of the enterprise zone under ORS 285C.155 and 285C.200(2) as described in OAR 123-065-4450.

(5) Under ORS 285C.200(5), if any employees, jobs or positions are transferred into the enterprise zone from a site that is outside but within 30 miles of the zone's boundary, then an additional requirement must be met with respect to section (1) of this rule, such that the respective definitions for Claim Employment and Existing Employment are also broadened to include employees located at any such site, as well as those inside the zone, unless the transfer occurred entirely:

(a) Before the application for authorization; or

(b) After April 1 of the first filing to claim the exemption on qualified property.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.050, 285C.175, 285C.200, 285C.220, 285C.225
Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0820; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4430

Maintaining Sufficient Employment

For purposes ORS 285C.200(1)(e) and 285C.210, a qualified business firm shall report to the county assessor and the local zone manager under ORS 285C.220 (as described in OAR 123-065-4570, directly after each calendar year while the enterprise zone exemption is received), such that:

(1) Failure occurs if any of the following is not true (unless waived under ORS 285C.155 and 285C.200):

(a) The latest Annual Employment equals or exceeds the greater of one plus or 1.1 times the Existing Employment;

(b) The current Claim Employment is not less than 15 percent of any previous Claim Employment; or

(c) The current Claim Employment and the one from the prior year's claim form are both not less than 50 percent or more of any previous Claim Employment.

(2) If failure occurs relative to section (1) of this rule, then the qualified business firm shall notify both the local zone manager and the county assessor in writing at the latest by July 1 of the year after the year in which the failure occurred, which may be:

(a) Satisfied through the filing of the exemption claim under ORS 285C.230(5).

(b) Accomplished by the owner of any qualified property that is leased by the qualified business firm.

(3) Notification of failure as described in section (2) of this rule shall result in the loss of the tax abatement covered by the same requirement pursuant to the same authorization application, such that either:

(a) The firm reimburses to the enterprise zone sponsor the amount of property taxes exempted in the year, in which failure occurred, under ORS 285C.240(6), as described in OAR 123-065-4950 to 123-065-4999; or

(b) The assessor disqualifies the firm under ORS 285C.240, including:

(A) Loss of future years of the exemption; and

(B) Retroactive payment with the next tax bill of applicable back taxes.

(4) If failure is discovered by the assessor or zone sponsor, but there is not timely notification as described in section (2) of this rule, then disqualification as described in subsection (3)(b) of this rule shall include the 20-percent penalty under ORS 285C.240(4) on back taxes.

(5) Consistent with the conditions in OAR 123-065-4420(5), an additional requirement must be met with respect to section (1) of this rule but only for the first year of exemption, such that the respective definitions for Annual Employment, Claim Employment and Existing Employment are also broadened to include employees located at any such site outside but within 30 miles of the zone's boundary, as well as jobs inside the zone.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.200, 285C.210, 285C.220, 285C.230, 285C.240
Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0830; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4440

Diminishing Employment Zone

Under ORS 285C.200(1)(d), (4) and (5), an authorized business firm seeking an exemption in any enterprise zone may not qualify or remain qualified if the firm transferred operations into the enterprise zone in association with closures, curtailment of operations, downsizing, employment reductions, layoffs or job losses anywhere else in this state, unless:

(1) Any such originating location is 30 miles or less from the boundary of the zone in which the business firm is seeking the exemption, and the requirements of ORS 285C.200(5) and 285C.210(2)(c) are met, as described in OAR 123-065-4420(5) and 123-065-4430(5).

(2) It is demonstrated by the firm, with or without the assistance of the zone sponsor, to the satisfaction of the county assessor or the Department that any closure/job losses more than 30 miles from the zone:

(a) Occurred entirely prior to the time of application for authorization;

(b) Occur entirely after the first assessment year of exemption on qualified property;

(c) Will not be permanent, such that the jobs are reasonably anticipated to be restored, and this does in fact happen on or before December 31 of the first initial year of exemption;

(d) Pertain to business operations that are in no way controlled by the firm through common ownership, corporate affiliation or contracts governing relevant operations or through other comparable intra/inter-firm relationships;

(e) Are completely unrelated to investments in the zone, such that the curtailed operations or jobs are not being transferred into the zone and would have occurred anyway; or

(f) Have only de minimis impact on the local economy, in that the job losses are less than one-tenth of 1 percent (0.1%) of the most recently available figure from this state's Employment Department for annual average covered employment of the county containing the lost employment.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.200, 285C.210 & 285C.240
Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0840; EDD 1-2005, f. & cert. ef. 2-25-05

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123-065-4450

Local Waiver of Ten-percent Employment Increase

For purposes of ORS 285C.155, 285C.200(2) and 285C.205, in which the local enterprise zone sponsor waives the required increase in the employment of the firm, in order for an eligible business firm to qualify:

(1) The requirements as described in OAR 123-065-4420(1) or 123-065-4430(1) do not apply, but those related to not decreasing employment outside the zone still do, consistent with OAR 123-065-4420(5), 123-065-4430(5) and 123-065-4440, if relevant.

(2) To use the provisions of either ORS 285C.200(2)(b)(A) or (B), a majority of each governing body of the sponsor, as stipulated in the respective city or county charter, must each approve a resolution, such that the resolution or resolutions:

(a) Are adopted before the eligible business firm is authorized;

(b) Stipulate the minimum employment level to be maintained during the exemption as described in section (4) of this rule; and

(c) Identify any other reasonable condition that are:

(A) Jointly agreed to among the cosponsors;

(B) Implemented according to the same, commonly adopted language for standards, verification and so forth; and

(C) Subject to the applicable provisions of OAR 123-065-2500 to 123-065-2599.

(3) The resolution(s) described in section (2) of this rule shall incorporate:

(a) The statutory minimum investment amount under ORS 285C.200(2)(b)(A), which may be satisfied by the cost of qualified property that is placed in service and contained in property schedules over as many as three successive years, as otherwise allowed pursuant to a single authorization application; or

(b) For purposes of ORS 285C.200(2)(b)(B), the zone sponsor's specifications and methods for managing, measuring and enforcing the requirements under ORS 285C.205, to increase productivity by 10 percent, and to dedicate 25 percent of the property tax savings to employee training.

(4) The minimum employment as stipulated in the resolution(s):

(a) Is a single, stated number of employees;

(b) May be determined, as indicated in the resolution(s), by way of either Annual Employment or Claim Employment; and

(c) Relative to Existing Employment:

(A) May be lower for purposes of ORS 285C.200(2)(b)(A); or

(B) Shall be at least the same under ORS 285C.200(2)(b)(B).

(5) Final processing and distribution of the authorization application shall be delayed until final approval of the resolution or resolutions in section (2) of this rule, copies of which shall be included with materials distributed, as described in OAR 123-065-4340(5)(b).

(6) Prior to July 1 of the first tax year of the exemption, pursuant to the initial exemption claim and property schedule filed by the business firm under ORS 285C.220 and 285C.225, the resolution or resolutions adopted by the sponsor may be jointly modified in accordance with sections (2) to (4) of this rule, but only if so requested by the firm.

(7) Failure to satisfy the minimums, requirements or conditions, as described in this rule, shall result in the exemption's denial or disqualification consistent with OAR 123-065-4430(2) to (4), although the county assessor is in no way obligated to consider compliance with any requirement arising under ORS 285C.155 or 285C.205 without formal communication from the zone sponsor.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.155, 285C.200, 285C.205, 285C.230, 285C.240

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0850; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4460

Commonly Owned Corporate Entities

Under ORS 285C.135(4):

(1) Employment of the firm as defined in OAR 123-065-4400 does not include jobs located at and employed by any company operating inside the enterprise zone other than the eligible business firm, regardless of the extent to which the firm and the other company have common ownership.

(2) Section (1) of this rule is not applicable if the following criteria are met:

(a) The common ownership is total, such that:

(A) The firm owns 100 percent of the other company;

(B) The other company owns 100 percent of the firm; or

(C) The firm and the other company have exactly the same owner, owners or shareholders; and

(b) Before the first, initial exemption claim under ORS 285C.220, the firm notifies the local zone manager and the county assessor in writing that

employees of the firm and employees of the other company are to be combined for purposes of applicable requirements of the enterprise zone exemption.

(3) If total common ownership is achieved according to paragraph (2)(a)(B) or (2)(a)(C) of this rule, the written notice as described in subsection (2)(b) of this rule must include the signed and dated authorization of an owner, executive officer or legally authorized representative of such an owner or officer of the company or corporation with 100-percent ownership of the firm or any such jointly owned company or companies.

(4) If the firm exercises the exception in section (2)(b) of this rule, then all relevant definitions and requirements of ORS 285C.050 to 285C.250 and this division of administrative rules apply to the combined hiring, compensation, employment levels and so forth of the qualified business firm and any such jointly owned company or companies in the zone.

(5) An eligible business firm is not bound by the definitions and requirements as indicated in section (4) of this rule for any other exemption received in the same or another enterprise zone and may retract the election made for subsection (2)(b) of this rule prior to the first filing of an exemption claim.

(6) Notwithstanding section (5) of this rule, the election of a qualified business firm in effect at the time of the termination of the enterprise zone shall apply consistently to all exemptions allowed under ORS 285C.245(1) in the terminated zone.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135, 285C.200, 285C.220 & 285C.245

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0860; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4470

Sale or Leasing of Exempted Property

For purposes of ORS 285C.175(2)(c):

(1) A qualified business firm as defined in ORS 285C.050(16) may sell or lease qualified property without triggering disqualification on such property under 285C.240, such that the exemption continues for the remainder of its normal period.

(2) Section (2) of this rule depends on all of the following:

(a) The qualified property continues to be located and eligibly used inside the enterprise zone.

(b) The purchaser or lessee is an eligible business firm under ORS 285C.050(6).

(c) The requirements under ORS 285C.210 as described in OAR 123-065-4430 are met, such that:

(A) The combined Annual Employment of the purchaser/lessee and the originally qualified business firm equals or exceeds what it otherwise would need to be, plus 100 percent of the annual average employment of the purchaser/lessee in the zone (as computed consistent with OAR 123-065-4410) immediately prior to the change in ownership/lease; and

(B) The combined Claim Employment shall be compared to previous Claim Employment, to which is added the total employment of the purchaser/lessee in the zone at the time of the change in ownership/lease.

(d) That the purchaser/lessee and the qualified property comply with all other applicable requirements of ORS 285C.050 to 285C.250.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.175, 285C.210 & 285C.240

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0870; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4480

Property, Jobs and Multiple Authorizations

For purposes of concurrent exemptions under ORS 285C.175 on qualified property constructed, modified or installed pursuant to two or more applications for authorization by the same eligible business firm, consistent with OAR 123-065-4365:

(1) Separate exemption claims and property schedules shall be filed, as described in OAR 123-065-4560 and 123-065-4570, to correspond to each application and the qualified property best associated with it.

(2) Qualification shall depend on the satisfaction of employment requirements arising from the application, with which the particular property is most clearly associated.

(3) For qualified property that cannot be definitively associated with any outstanding application, qualification shall depend on satisfaction of the most effectively stringent requirement from among the outstanding applications.

(4) If qualified property is specifically identified in two or more outstanding applications, then qualification may depend on satisfaction of the least effectively stringent requirement from among the outstanding applications.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

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Stats. Implemented: ORS 285C.050, 285C.175, 285C.210 & 285C.240
Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0880; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4500

Definitions

For purposes of OAR 123-065-4000 to 123-065-4999, as used in 285C.050 to 285C.250, consistent with the definitions in ORS Chapter 307 and OAR 150-285C.180:

(1) "Addition" means one or both of the following as indicated by the statutory context:

(a) The re-construction of an existing building or structure to expand or enlarge its area, volume, dimensions or structural capacity; or

(b) The newly erected or created space, enclosure or annex of the building or structure, per the re/construction described in subsection (a) of this section.

(2) "Building" means a real property improvement erected on the land, mostly enclosed by walls and roofing, and designed for human use, occupancy or shelter, including structural components necessary to make the building usable and habitable such as wiring, plumbing, foundation, fixtures, lighting and heating and cooling system.

(3) "Commercial" relates to the principal undertaking by a qualified business firm in the direct furtherance of the production of income through the handling, making or provision of goods, products or services for ultimate (though not typically direct) sale.

(4) The "completion of the construction, addition, modification or installation" of property has the same meaning as placing property 'in service' under ORS 285C.050(11) and means that qualified property is legally operable and practically ready for use or occupancy by an authorized business firm, including but not limited to the installation, testing or proving of safety, information or other equipment or systems essential to the property's commercial operation, but excluding training of personnel and other similarly intangible activities however critical they might be.

(5) "Cost" means expenses that can be documented through existing records or retrospective compilation of evidence, and that are incurred for:

(a) Construction, reconstruction modification or installation of qualified property, including but not limited to materials, supplies, labor, paint, contractor charges, equipment usage, engineering, architectural fees and physical connections to utilities and other property, but excluding the costs associated with maintenance, financing, legal fees, off-site improvements, the authorized business firm's own management and so forth; or

(b) Purchase of real or personal property machinery or equipment or of ready-made buildings or structures directly prior to installation or occupancy. Real market value shall be substituted for purchase price in the case of existing property that has not been recently sold (for example, leased property).

(6) "Installation" means the actual placement, affixing, connection or integration of machinery or equipment or personal property in or with a building, structure or other machinery or equipment for purposes of being used and does not mean the purchase, onsite delivery or storage of such property.

(7) Subject to further definition in OAR chapter 150 under ORS 285C.185(6)(b), "item" means any personal property that may be effectively appraised or assessed as a unit, including but not limited to an entire conveyance, information or other system, the various components of which are mechanically, electrically or similarly integrated.

(8) "Land" means raw undeveloped land and any improvements to the land for site development.

(9) "Located in/inside the enterprise zone" means that the qualified property is used and operated for trade or business within the current boundary of the enterprise zone and is not removed from it during the exemption period, except for incidental reasons or for purposes of the property's repair, maintenance and so forth.

(10) "Modification" has the meaning explicated in OAR 123-065-4070.

(11) "Personal property" means any tangible property (readily movable as opposed to effectively fixed or stationary) that is used in the business process or activity and is otherwise subject to ad valorem taxation, including but not limited to devices, tools and (former) spare parts that are put to use (see OAR 123-065-4520).

(12) "Production of tangible goods" means any physical process or manipulation of materials, commodities or products including but not limited to manufacturing, assembly, sorting, cooking, heating, freezing, mixing, sorting, wrapping, onsite conveyance, packaging or bulk printing.

(13) "Real property machinery or equipment" means real property (fixed or stationary and immovable due to weight, size or attachment to or

integration with other real property) used in the business process or activity that is not otherwise described in this rule including but not limited to devices, fixtures, specialized pipes, venting, air filtration systems, special wiring, electrical panels or switches, or other non-structural forms of assembled apparatus.

(14) "Structure" means a real property improvement on or under the land other than buildings, machinery or equipment, including but not limited to ramps, docks, parking lots, outdoor free-standing signs, subterranean compartments and outdoor lighting, as well as associated fixtures, wiring, pipes, foundations and so forth.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050 - 285C.250

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0900; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4510

Authorization & Eligible Utilization of Property

For purposes of property to be exempt in an enterprise zone under ORS 285C.170 or 285C.175:

(1) It must be exclusively for use in one or more eligible activities as described in OAR 123-065-4220, and it must not be used for any ineligible activity listed in OAR 123-065-4230(1).

(2) Consistent with section (1) of this rule, some property will typically not qualify for the exemption, including but not limited to the following examples:

(a) Commercial fixtures and space in a retail setting;

(b) A commercially operated kitchen and associated fixtures and appliances;

(c) Entertainment, recreational and exercise facilities or equipment;

(d) Medical devices; or

(e) Construction machinery.

(3) Sections (1) and (2) of this rule are excepted in the case of otherwise qualified property that is used for operations and at facilities as described in OAR 123-065-4230(2) or (4), including but not limited to being used in association with electronic commerce operations in a so-designated area, as described in OAR 123-065-7200 to 123-065-7500.

(4) Any such property must also:

(a) Belong to the authorized business firm by virtue or ownership or formal lease agreement;

(b) Adequately relate to the authorization application in accordance with OAR 123-065-4355; and

(c) Be constructed, added to, modified or installed in the zone to serve commercial/non-personal purposes, for which it is all but exclusively utilized.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135, 285C.180, 285C.185 & 285C.240

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0910; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4520

Mechanical, Personal and Unqualified Property

For purposes of the property to be exempt in an enterprise zone under ORS 285C.170 or 285C.175:

(1) Real property machinery or equipment or personal property may qualify for the exemption, despite prior usage outside the zone (or as allowed under ORS 285C.190), taking account of the usual factors of appraisal, such as age, deterioration and obsolescence, as well as any reconditioning, refurbishment or restoration.

(2) Neither real property machinery or equipment (except as allowed under ORS 285C.190) nor personal property may qualify for the exemption, if more than three months before submission of the authorization application it was already both:

(a) Owned or leased by the business firm; and

(b) Located in the county containing the site of the property inside the zone.

(3) An item of personal property machinery or equipment with a cost of less than \$50,000 may qualify for the exemption only if used:

(a) Exclusively in the production of tangible goods, which by itself will usually preclude furniture and most simple, ordinary communication, design, information, office or video machines/systems; or

(b) In Electronic Commerce as described in OAR 123-065-7100 and at a location in a so-designated area as described in OAR 123-065-7200 to 123-065-7500. (No other special eligibility exception replaces subsection (a) of this section)

(4) For purposes of subsection (3)(a) of this rule, the exemption shall apply to any personal property item of machinery or equipment that does the following:

ADMINISTRATIVE RULES

(a) Serves the business firm's commercial activity, consistent with OAR 123-065-4500(12), even if the tangible good in question is not actually created or manufactured from raw inputs, but is instead modified, processed, restored, repaired, measured, sized, imprinted, packaged, conveyed, shipped or comparably affected in a physical manner.

(b) Maintains, calibrates, adjusts, monitors, tests or fixes qualified property directly involved with tangible output or production, or is used to assure quality control of tangible output or production, including but not limited to research and development equipment incorporated into production activities.

(5) Regardless of any other provision of this division of administrative rules, the following property may not qualify for the exemption:

- (a) Land and improvements "to" raw land, such as site preparation.
- (b) Any item of personal property with a cost of less than \$1,000.
- (c) Raw materials, fuel, lubricants and other 'noninventory' supplies.
- (d) Any machinery, equipment or device that moves by its own motive power under the control of its operator/driver, including but not limited to forklifts.
- (e) Any self-propelled motorized vehicle.
- (f) Any device or item that is pulled, pushed or carried by a vehicle and designed to hold and transport people, goods or property on highways, waterways or railways beyond the zone boundaries, including but not limited to trailers, rolling stock, barges, carriages or railroad cars.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.180, 285C.185 & 285C.190

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0920; EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4530

Buildings, Structures & Other Real Property

For purposes of property to be exempted in an enterprise zone under ORS 285C.170 or 285C.175:

(1) No building, structure or newly installed real property machinery or equipment may qualify, unless the total cost of all such property in a single property schedule (as attached to an exemption claim under ORS 285C.225) equals at least \$50,000.

(2) Qualified property, including but not limited to a building or structure, is severable under ORS 285C.180(5), such that:

(a) A part of the building or structure may be exempt, even if another part of the same building or structure is owned or leased by a different business firm, used for ineligible activities, or otherwise not subject to the same exemption, including but not necessarily as anticipated per OAR 123-065-4325(3)(e); and

(b) The amount of property value that is exempt shall be determined through pro rata calculation based on floor area or other reasonable method.

(3) As determined by the county assessor, a golf course or elements thereof may be classified as a structure or structures in the case of a hotel, motel or destination resort under ORS 285C.185(4).

(4) The exemption on qualified additions or modifications to an existing building or structure under ORS 285C.175(3)(b) (or to existing real property machinery or equipment under ORS 285C.190) is measured in each year of the period of exemption by:

(a) Identifying the new improvements to property attributable to those same qualified additions or modifications;

(b) Accounting for all other concurrent property improvements, retirements or adjustments that affect the valuation of the taxable property containing the new improvements identified for purposes of subsection (a) of this section;

(c) Computing the assessed value (using either the real market value or the maximum assessed value whichever is lower in each case) of such taxable property:

(A) With such new improvements; and

(B) Without such new improvements (that is, the assessed value that would have been subject to taxation during the period of exemption); and

(d) Taking the difference between the values described in paragraphs (c)(A) and (c)(B) of this section, such that any negative difference is equated to zero.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.175, 285C.180, 285C.185 & 285C.190

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0930; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4540

Property Already Entered on Rolls

Qualified property is not necessarily prohibited from receiving an enterprise zone exemption under ORS 285C.170 and 285C.175, even if it is already entered on the assessment roll of the county (after the effective

date of the zone's designation or the area's amendment into the zone), including but not limited to the following examples, for when assessment might occur before property may be exempt:

(1) Property while in the process of construction, modification or installation is ineligible under ORS 285C.170 or 307.330, because of failure to make timely application, fulfill applicable criteria or the like.

(2) Machinery or equipment located elsewhere in the county is subsequently acquired by the authorized business firm and installed in the enterprise zone.

(3) While an administrative or judicial appeal is pending.

(4) The authorized business firm missed the first-year filing deadline but receives the remaining years of the exemption as described in OAR 123-065-4565.

(5) Other circumstances that do not necessarily nullify the exemption under ORS 285C.175.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.170, 285C.175, 285C.180 & 285C.220

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0940; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4550

Obligations for All Leases, Lessors and Lessees

Any qualified property that is not owned by the authorized business firm may be exempt in an enterprise zone under ORS 285C.185(3), if used, occupied or operated by the firm under a lease agreement, such that:

(1) The lease agreement is not required with the authorization application, except as described in OAR 123-065-4315, but it must:

(a) Be executed no later than July 1 of the first tax year of exemption under ORS 285C.175; and

(b) Not expire before the end of the final tax year.

(2) The owner of leased qualified property may be any person or corporation, including but not limited to a governmental body or an owner of the firm.

(3) The lease agreement must effectively operate as a net lease, inasmuch as:

(a) All ad valorem taxes assessed against any property covered by the lease agreement are directly paid by or collected from the firm/lessee; or

(b) The owner of the property is or will be compensated in full for such property taxes in addition to rent or other costs throughout the period of the lease.

(4) The stipulation of a net lease is irrelevant if the owner and lessee are commonly owned and treated as a single eligible business firm according to OAR 123-065-4460.

(5) The owner of any such qualified property (even machinery or equipment) must join the firm in filing the property schedule as an attachment to the exemption claim form under ORS 285C.225(4)(d) for the first exemption year, such that the owner or the owner's authorized legal agent signs one of the following:

(a) The same property schedule that has the original signature of the firm's representative; or

(b) An attachment to the schedule that provides for equivalent acknowledgment by the owner.

(6) For purposes of this rule, the "owner" may be substituted by a lessee that sub-leases property to the firm.

(7) The owner has the same right as the firm to timely notify the county assessor and the zone sponsor under ORS 285C.240(1) if a requirement is not met, in order to avoid penalties under ORS 285C.240(4).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.170, 285C.175, 285C.180 & 285C.220

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0950; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4560

Mandatory First-Year Claim with Property Schedule

For purposes of being granted an enterprise zone exemption on qualified property under ORS 285C.175:

(1) The authorized business firm:

(a) Must file the latest revision of the following Department of Revenue forms with the county assessor under ORS 285C.220 and 285C.225 to begin the exemption period:

(A) 150-310-075, Oregon Enterprise Zone Exemption Claim; and

(B) 150-310-076, Oregon Enterprise Zone Property Schedule (as an attachment that lists and identifies all of the property to be exempt);

(b) May do so only after December 31 of the year, in which the re/construction, modification or installation of qualified property is completed;

(c) Shall send copies of the forms to the zone sponsor; and

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(d) Is in no way bound by dates for such completion or filing as anticipated in or with the authorization application.

(2) The property may not have been placed in service at a location inside the zone before January 1 of the year directly prior to filing the exemption claim as described in section (1) of this rule.

(3) Subsection (1)(b) of this rule is synonymous with qualified property being 'placed in service' during that year, which:

(a) May be only a portion of the entire investment proposed with authorization; and

(b) Does not include property (even if physically operable or finished) that pending completion of further work on the overall facility or investment is:

(A) Incapable of effective use or occupancy for commercial purposes; or

(B) Not yet intended to be so used or operated, subject to testing, shakedown or other general startup steps.

(4) Sections (1) to (3) of this rule dovetail and are mutually exclusive with criteria for exemption under ORS 285C.170, as described in OAR 123-065-4800.

(5) The filing as described in section (1) of this rule shall be due no later than the corresponding April 1, but may be submitted/revise later:

(a) By June 1 with a late fee under ORS 285C.220(7);

(b) By June 1 to amend a timely filed schedule form under ORS 285C.225(5); or

(c) By the following April 1 with loss of the first exemption year as described in OAR 123-065-4565.

(6) The county assessor may deny the exemption under ORS 285C.175(6) if unable to obtain critical and reasonably requested clarification, confirmation or substantiation of information missing from or supplemental to the filed forms from the:

(a) Firm under ORS 285C.220(3); or

(b) Zone sponsor under ORS 285C.230(1)(b).

(7) The county assessor shall deny the exemption to any authorized business firm with inactive status, as described in OAR 123-065-4375, if the filing does not include the fee under ORS 285C.165(3) (in addition to subsection (4)(a) of this rule if applicable).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.165, 285C.170, 285C.175, 285C.220, 285C.225, 285C.230

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00,

Renumbered from 123-065-0960; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4565

Very Late Filing for Exemption Net First Year

Under ORS 285C.220(10), for purposes of receiving the remainder of an exemption less the first year for the late submission of an exemption claim and property schedule to the county assessor under ORS 285C.220 and 285C.225:

(1) Any authorized business firm missing the April 1 due date (as well as the June 1 late filing deadline) must submit the claim form and schedule on or before April 1 of the next year; and

(2) The firm must have complied with all applicable requirements as if the exemption were in effect during that first year.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.220 & 285C.225

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00,

Renumbered from 123-065-1090; Renumbered from 123-065-4690, EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4570

Filing Latter-year Claims

In order for qualified property to be exempt in an enterprise zone throughout the entire period under ORS 285C.175:

(1) The qualified business firm shall file annually under ORS 285C.220:

(a) Using the latest revision of Department of Revenue form 150-310-075, **Oregon Enterprise Zone Exemption Claim**;

(b) With the county assessor and a copy to the zone sponsor;

(c) On or before April 1 directly after every assessment year of exemption; and

(d) In addition to the first-year filing described in OAR 123-065-4560.

(2) The claim form shall also serve the exemption of other property pursuant to the same authorization, consistent with OAR 123-065-4355(5), including but not limited to the attachment of another property schedule for any new, additional qualified property.

(3) Despite section (2), this rule addresses the claim form that is filed simply for purposes of compliance in maintaining an ongoing exemption.

(4) If such a filing is not timely received by either the assessor's office or the zone sponsor, it may be accepted until August 31 under ORS 285C.220(8), but only if:

(a) Furnished to both entities; and

(b) Accompanied with the progressively larger late filing fee to the assessor.

(5) The local zone manager shall promptly alert the county assessor in the event that the zone sponsor's copy was not received or timely sent.

(6) The assessor may henceforth deny the exemption for the remainder of the period, subject to notice under ORS 285C.175(6):

(a) Pursuant to an unrequited request as described in OAR 123-065-4560(6); or

(b) Without further reason or formal procedure if:

(A) The claim form is not received (at the latest on August 31); or

(B) It is filed after April 1 but without a sufficient amount for the late filing fee.

(7) The zone sponsor or the county assessor may exercise the procedure under ORS 285C.235 to demand corroborating evidence of the firm by time/receipt-verified mail, such that:

(a) This would be the logical recourse if a claim form were not filed after the final year of exemption;

(b) This procedure is always available if the submitted information and the compliance of the firm with employment/other requirements is suspect; and

(c) Disqualification of the entire exemption ensues:

(A) Automatically, if the firm does not satisfactorily respond within 60 days; or

(B) Most likely with the penalty under ORS 285C.240(4), in the event that provided evidence shows that the qualified business is required to have given notice under ORS 285C.240(1)(b), (c) or (d).

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.175, 285C.220, 285C.225, 285C.230, 285C.235, 285C.240

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00,

Renumbered from 123-065-0970; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4580

Disqualification of Particular Property

An ongoing enterprise zone exemption under ORS 285C.175 is not forfeit for all qualified property of a qualified business firm, if only certain property fails to satisfy a relevant requirement, such that:

(1) Disqualification (including back taxes) shall ensue under ORS 285C.240 for any such property. (The one-year payback of tax savings under ORS 285C.240(6) does not apply)

(2) Such disqualification pertains when the exempt property no longer satisfies a relevant criterion under ORS 285C.175, 285C.180, 285C.185 or 285C.190.

(3) Section (2) of this rule includes but is not limited to the following events that occur during a calendar year while the exemption is being received, in that the particular property is:

(a) Removed from the enterprise zone;

(b) Sold, exchanged or leased to another business firm, except as described in OAR 123-065-4470; or

(c) Used ineligibly or by an ineligible business firm in violation of OAR 123-065-4510.

(4) Property is also disqualified if it is not actually used or occupied (notwithstanding its being placed in service):

(a) On or before June 30 of the first assessment year of exemption; or

(b) For at least 180 consecutive days concluding in any subsequent exemption year.

(5) In order for the qualified business firm to avoid the 20-percent penalty on the back taxes associated with such property-specific disqualification, notice under ORS 285C.240(1)(a), (e) or (f) is due by July 1 after the year in which failure occurred.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.175, 285C.220, 285C.225, 285C.230, 285C.235, 285C.240

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00,

Renumbered from 123-065-0980; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4590

Designation/Amendment of an Enterprise Zone

Irrespective of any other provision for receiving an enterprise zone exemption on qualified property:

(1) No such property may receive an exemption if located in the zone prior to the effective date of:

(a) The designation of that zone; or

(b) That location's inclusion in the zone by a change in the zone boundary.

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(2) The restriction in section (1) of this rule does not apply if the property:

(a) Would have been allowed to qualify in a terminated zone under ORS 285C.245(1), as described in OAR 123-065-4600 to 123-065-4649, and the business firm is/remains actively authorized; or

(b) Is in the process of being constructed, added to, modified or installed, and such physical work is specifically excluded by OAR 123-065-4313(1) for purposes of authorizing an eligible business firm.

(3) Only as described in subsection (2)(a) (not OAR 123-065-4540 or subsection (2)(b)) of this rule may qualified property receive an enterprise zone exemption if actually listed on the assessment rolls of the county, at any site in the county on or before an effective date as described in section (1) of this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.175

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0990; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4600

Purpose and Scope

OAR 123-065-4600 to 123-065-4649 address operation of the three- to five-year exemption under ORS 285C.175 on taxable property in situations where the enterprise zone is terminated. Only as provided under ORS 285C.245(1) may an exemption be granted on qualified property within the former boundary of such an enterprise zone, subject to the usual requirements of ORS 285C.050 to 285C.250.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.175 & 285C.245

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4610

Authorization

For purposes of claiming and being granted the enterprise zone exemption under ORS 285C.175:

(1) An eligible business firm is authorized if before the effective date of the zone's termination, the local zone manager receives the application for authorization, and it is approved by the zone sponsor and the county assessor under ORS 285C.140.

(2) Similarly, termination of the zone does not affect an eligible business firm's authorization that is active when the zone terminates, except as specified in this rule and OAR 123-065-4640.

(3) For an authorized business firm as described in section (1) or (2) of this rule, following termination:

(a) ORS 285C.165 (active status of authorization) is irrelevant for qualified property remaining outside of a current enterprise zone;

(b) The firm may not effectively reapply for authorization for a proposed investment under ORS 285C.245(1)(b) at the same site, unless it is also qualified in the terminated zone, and the requirements listed in OAR 123-065-4620 are met; and

(c) The authorization expires on January 1 in or directly after the 30th month of the zone's termination, such that the firm:

(A) No longer remains authorized under ORS 285C.245(1)(a)(B)(ii); and

(B) May receive exemption only on qualified property placed in service before that date.

(4) An authorized business firm described in section (1) of this rule may not apply for authorization at any site in the terminated zone under ORS 285C.245(1)(b), with the same exception as described in subsection (3)(b) of this rule.

(5) Consistent with OAR 123-065-4590(2)(a), an authorization is automatically assigned to a newly designated zone, if:

(a) The zone encompasses the site of the authorized business firm's proposed investment; and

(b) The authorization is:

(A) Active under ORS 285C.165; and

(B) Not expired as described in subsection (3)(c) of this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.175 & 285C.245

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0790; Renumbered from 123-065-4390, EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4620

Grandfathering in a Terminated Zone

(1) After the termination of an enterprise zone, an enterprise zone exemption shall be granted under ORS 285C.245(1)(b) for qualified property that is located outside of a current enterprise zone, and that is owned

or leased by an eligible business firm, if all of the following requirements are met:

(a) Within ten years after the effective date of the termination of the zone, the eligible business firm submits a complete application for authorization pursuant to the applicable provisions of ORS 285C.140;

(b) The qualified property is to be located entirely within the boundaries of the terminated zone, as they existed at the time of termination;

(c) On the effective date of termination, the eligible business firm was actively authorized or qualified in that same zone, except as restricted by OAR 123-065-4610(3)(b) or 123-065-4630;

(d) The eligible business firm has not been disqualified under ORS 285C.245(1)(c) in the terminated zone;

(e) Construction, modification or installation of the qualified property commences on or before June 30 of the tax year in which the firm's last outstanding exemption in the zone concludes;

(f) The eligible business firm's application for authorization is approved:

(A) By the county assessor and the local manager of the terminated zone or the manager's successor;

(B) Lacking a local zone manager, by the county assessor and either the Department or a formal action of the zone sponsor; or

(C) On appeal;

(g) Completion of construction, modification or installation occurs in accordance with OAR 123-065-4640;

(h) Timely exemption claim is made to the county assessor under ORS 285C.220 and 285C.225; and

(i) The authorized business firm complies with all applicable requirements of ORS 285C.050 to 285C.250 in effect when the zone terminated, including but not limited to any requirement arising from or associated with authorization.

(2) Disqualification for purposes of ORS 285C.245(1)(c) does not include either:

(a) Loss of an extended abatement under ORS 285C.240(3)(b); or

(b) Payment to the zone sponsor of the equivalent of one year's tax savings under ORS 285C.240(6).

(3) The sponsor of a terminated enterprise zone may consider, approve and enter into a written agreement with an eligible business firm for an extended abatement under ORS 285C.160, prior to final action for subsection (1)(f) of this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.175 & 285C.245

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00; Renumbered from 423-065-0420, EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4630

Purchase of Grandfathered Firm

An authorized or qualified business firm may not apply for authorization under ORS 285C.245(1)(b) in an enterprise zone that has terminated, if since termination, the firm has been purchased by and integrated into another business or corporation, except in the case where the firm remains essentially intact as a corporate entity, such as becoming a subsidiary to the purchasing corporation operating much as it did before the merger or acquisition.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.175 & 285C.245

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; Renumbered from 423-065-0430, EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4640

Timely Completion of Construction

For purposes of a proposed investment in qualified property by a business firm that is authorized in a terminated enterprise zone under ORS 285C.245(1)(a)(B)(iii) and (b):

(1) Completion of "construction, addition modification or installation within a reasonable time" means the property is placed in service no later than 18 months after the date on which any relevant construction, reconstruction, modification or installation activity commenced.

(2) "Without interruption" means for any such activity that qualified property does not remain in an unfinished state for more than six months without significant progress toward the completion of activities as described in section (1) of this rule.

(3) The property may not qualify and receive the exemption under ORS 285C.175, if section (1) or (2) of this rule is violated, except as allowed in section (4) of this rule.

(4) Section (3) of this rule is waived, and the exemption is allowed, if the Department issues a written finding to the county assessor that the violation of section (1) or (2) is reasonable and not excessive, given the nature

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and extent of the authorized business firm's investment or of inadvertent circumstances.

(5) The prohibitions and allowances of this rule are irrelevant if the application for authorization is:

- (a) Denied or not approved, subject to appeal;
- (b) Invalid in terms of its submission and so forth;
- (c) Formally withdrawn by the firm; or
- (d) Expired as described in OAR 123-065-4610(3)(c).

(6) Nothing in this rule shall be construed as influencing or restricting the qualification of an exemption in an enterprise zone that still exists and is not terminated.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.175 & 285C.245

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; Renumbered from 423-065-0440, EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4700

Purpose and Scope

OAR 123-065-4700 to 123-065-4760 implement ORS 285C.200(1)(f), pertaining to a business firm's compliance with other laws in order to receive an exemption on property in an enterprise zone. They have been adopted pursuant to specific Legislative direction for such rules under ORS 285C.200(6).

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.200(6)

Stats. Implemented: ORS 285C.200

Hist.: EDD 13-2000, f. & cert. ef. 8-15-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4710

Definitions

For purposes of OAR 123-065-4700 to 123-065-4760, with respect to an eligible business firm:

(1) Determination means either of the following:

(a) A rightfully available written admission by the firm of a Noncompliance; or

(b) The issuance of an order, ruling or similar action by a duly empowered court, regulatory authority or similar entity that is:

(A) An official finding of Noncompliance that has the force of law under the jurisdiction of the court, regulatory authority or similar entity; and

(B) The final action by the particular regulatory or judicial process, even if prior to potential appeals.

(2) Event of Noncompliance means a Determination corresponding to an Illegal Act for which the underlying Noncompliance is both:

(a) Material, as described in OAR 123-065-4740; and

(b) Not cured in accordance with OAR 123-065-4750.

(3) Illegal Act means an action, omission, chain of occurrences or similar failing or failings by the firm or by its officer or agent in the conduct of the firm's operations and activities that effectively takes place after the firm's application for authorization and on or before December 31 of the last year of exemption, and that causes the Noncompliance corresponding to the relevant Determination. (An Illegal Act may also result from Noncompliance with a Determination related to an earlier act)

(4) Noncompliance means a violation of a law, as enacted by one of the following, or the violation of any of the rules or regulations duly promulgated thereunder:

(a) The United States Congress;

(b) The Oregon Legislative Assembly; or

(c) The governing body of a city or county that sponsors the enterprise zone.

(5) Substantial Falsification means that information in a form, filing or associated documentation by the firm, subject to declaration under penalties of false swearing, does one or both of the following:

(a) Misreports or omits required information, such that the enterprise zone exemption would have been denied or disqualified had the information been correctly or completely reported, which by itself shall be considered an Illegal Act in addition to any penalties resulting from the false swearing under ORS 305.990(5); or

(b) Contradicts OAR 123-065-4720(1), in that at the time of the relevant declaration, the firm failed to disclose an Illegal Act, of which it is reasonably expected to have been aware, including but not limited to one that is ongoing at the time of authorization, subject to a Determination.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.200(6)

Stats. Implemented: ORS 285C.200

Hist.: EDD 13-2000, f. & cert. ef. 8-15-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4720

Declarations and Responsibilities

(1) For any form or document issued by the Department of Revenue for submission or filing by a business firm in association with an enterprise zone exemption, the written declaration that is made under penalties of false swearing (as to the truth and correctness of the form or document under ORS 305.810 and 305.815) shall also include a statement to the effect that the firm is in compliance with all applicable laws described in OAR 123-065-4710(4).

(2) Without evidence of a Determination:

(a) The county assessor is under no obligation to undertake any effort for purposes of ORS 285C.200(1)(f); and

(b) The exemption on qualified property of an otherwise qualified business firm is unaffected.

(3) Regardless of expertise or jurisdiction, any entity or person may present evidence of a Determination to the county assessor.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.200(6)

Stats. Implemented: ORS 285C.125 & 285C.200

Hist.: EDD 13-2000, f. & cert. ef. 8-15-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4730

Effect of Event of Noncompliance

Upon an Event of Noncompliance:

(1) In the case where an authorized business firm is not yet qualified, the county assessor shall deny exemption under ORS 285C.170 or 285C.175.

(2) In the case where the firm is receiving or has received the exemption, the Event of Noncompliance shall cause disqualification of the exemption under ORS 285C.240 (including back taxes).

(3) In response to or in anticipation of such denial or disqualification, the assessor shall give notice that:

(a) Is sent to the firm and is copied to the zone sponsor, the Department of Revenue and the Department;

(b) Provides the firm with an explanation of the action and includes copies or descriptions of the evidence for the Determination; and

(c) Explains how the firm may appeal the action or anticipated action to the Tax Court in accordance with ORS 305.275(1)(c).

(4) The county assessor may reverse a decision or action in section (1) or (2) of this rule, for the following reasons:

(a) Reconsideration of an issue listed in OAR 123-065-4760(1); or

(b) A successful appeal that negates the Determination.

(5) As necessary to effect a reversal for section (4) of this rule, the assessor may reinstate the exemption and refund taxes paid on qualified property to the firm consistent with provisions of ORS 311.806 and 311.812.

(6) If the Determination is appealed by the business firm through administrative or judicial channels under the law in question, then the assessor may indefinitely suspend the action as described in section (2) of this rule, such that:

(a) If the business firm prevails in the appeal, then the exemption is unaffected; or

(b) If the business exhausts, withdraws or effectively fails in its pursuit of such appeal, then the action takes effect, and the assessor may add interest to any back taxes to have been collected during the intervening time period until the next general property tax roll, but for the appeals process, consistent with provisions for the imposition of interest on uncollected taxes under ORS 311.206.

(7) The business firm's right to appeal actions or tax collections directly to the Oregon Tax Court is in no way infringed by this or any administrative rule, nor is it prevented by ORS 285C.200(6).

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.200(6)

Stats. Implemented: ORS 285C.125 & 285C.200

Hist.: EDD 13-2000, f. & cert. ef. 8-15-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4740

Materiality

An eligible business firm's Noncompliance is material for purposes of ORS 285C.200(1)(f), only if **all** of the following are true:

(1) Zone-Applicable. It is related to or part of actual operations of and by the business firm within the enterprise zone boundary, including firm-wide activities that actually influence affairs in the zone as well as elsewhere that the firm operates, such that:

(a) The Illegal Act(s) might still occur outside the zone and be material if derivable from or directly beneficial to operations of the firm in the zone; and

(b) Illicit intent associated with firm personnel or decisions inside the zone may be circumstantially indicated in the Determination, but still be

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immaterial, if having no evident effect on tangible activities or behavior at zone locations.

(2) Significant. It has or could conceivably harm, threaten, disrupt or undermine any of the following: An individual person, fair and honest commerce, government revenue collection, others' property rights, environmental protection, public health and safety, the general welfare and so forth, in contrast to a Noncompliance that results only in inconveniences (e.g., parking violations), aesthetic problems (e.g., poor landscape maintenance), etc.

(3) Substantive. It relates to the actual behavior or effects that the law in question is intended to control or prevent, as opposed to failings or missteps in terms of procedural matters, data reporting or similar technicalities, unless such failings or missteps exhibit willfulness, perniciousness or a history of repetition.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.200(6)
Stats. Implemented: ORS 285C.200
Hist.: EDD 13-2000, f. & cert. ef. 8-15-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4750 Cure

As a consequence of actions taken by an eligible business firm in response to a Determination, it may still comply with the law and, in effect, cure the Noncompliance for purposes of ORS 285C.200(1)(f), such that:

(1) A Noncompliance is not curable if, in the presence of clear and convincing evidence, the Illegal Act in question is:

(a) Heinous, reckless or knowingly perpetrated or allowed to happen as a matter of firm policy; or

(b) Committed within five years of a previous determination relating to the same or similar violation of the law, regardless if the prior violation occurred:

- (A) Before authorization;
- (B) At a location outside the enterprise zone; or
- (C) Under another U.S. state's or locality's laws or regulations.

(2) A Noncompliance is also incurable if the total monetary penalty as described in subsection (3)(a) of this rule exceeds a level publicly declared for purposes of this rule and established by the zone sponsor, prior to when the Illegal Act occurred. According to stipulations in the sponsor's declaration, this level or levels shall be equal to or greater than:

(a) Twenty-five thousand dollars, for a fine or fines levied by a regulatory agency under a single citation or for closely related violations; and

(b) One hundred thousand dollars, overall, including but not limited to court-imposed damages.

(3) A Noncompliance, except as precluded by section (1) or (2) of this rule, may be cured insofar as the firm fully and clearly documents or demonstrates for the county assessor that:

(a) All fines, damages and so forth arising from the Determination in OAR 123-065-4710(1) have been paid in full, according to the final regulatory or judicial assessment imposed;

(b) The firm promptly submitted to and fulfilled all other applicable penalties and has taken or has demonstrable plans to take all other actions, as required by the court, regulatory authority or similar entity;

(c) The circumstances that led to the Noncompliance have been completely eliminated and resolved, such that further Noncompliance by the firm of a comparable or more serious nature is not expected to occur; and

(d) Reasonable efforts have been made to compensate other substantially harmed parties uninvolved with any court action.

(4) The decision to consider a Noncompliance cured is made on a one-time basis and shall be subject to neither ongoing action by the firm nor continual verification.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.200(6)
Stats. Implemented: ORS 285C.200
Hist.: EDD 13-2000, f. & cert. ef. 8-15-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4760 Interpretation

With respect to the interpretation and application of OAR 123-065-4700 to 123-065-4760 for purposes of ORS 285C.200(1)(f):

(1) There are five primary issues related to the conclusion that there is an Event of Noncompliance:

(a) Is there a Determination as defined?

(b) Did the Illegal Act occur as defined? ...for example, after the authorization application?

(c) Is the Noncompliance material?

(d) Is the Noncompliance curable? ...and if so, has it been cured; or

(e) Has there been Substantial Falsification, and what are the implications thereof?

(2) In deciding whether there is an Event of Noncompliance, the county assessor may do as follows at the assessor's initiative or in response to issues raised by a business firm's response to the notice provided in OAR 123-065-4730(3):

(a) The assessor may submit the question at issue to the sponsor of the enterprise zone whether through the local zone manager or otherwise, such that:

(A) The submission is made in writing with a summary of the matter, and the affected business firm, the Department of Revenue and the Department are sent copies; and

(B) The assessor may consider a written decision from the zone sponsor only within a prescribed period of time not exceeding 60 days after the submission.

(b) Either in lieu of or subsequent to the request and a decision by the zone sponsor, the assessor may submit the question or questions to the Director, such that:

(A) The submission is made in writing with a summary of the matter, and the affected business firm, the Department of Revenue and the zone sponsor are sent copies;

(B) The assessor certifies whether a conclusive response by the Director shall bind the assessor's action in OAR 123-065-4730;

(C) The Director may request additional information from the assessor, the firm, the sponsor, the Department of Revenue or the Department of Justice; and

(D) The Director shall respond in writing to the question or questions submitted by the assessor, which shall be treated as official state interpretation of this division of administrative rules.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.200(6)
Stats. Implemented: ORS 285C.200

Hist.: EDD 13-2000, f. & cert. ef. 8-15-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4800 Exemption Prior to Being 'In Service'

Under ORS 285C.170 qualified property of an actively authorized business firm in the enterprise zone is exempt from ad valorem taxation for up to two years, such that:

(1) Consistent with OAR 123-065-4560(4), this exemption precedes and complements the one under ORS 285C.175, in that

(a) It applies only to property that is not yet placed in service before the (January-1) assessment date; and

(b) It may not be used for property that may/must start the three- to five-year exemption period in the present assessment year.

(2) This exemption is largely interchangeable with the one under ORS 307.330 and 307.340 (Commercial Facilities Under Construction); common elements are:

(a) The firm must file with the county assessor:

(A) Not later than April 1 of each assessment year when the property exists in the zone/county; and

(B) Using the latest revision of the Department of Revenue form 150-310-020, Application for Cancellation Of Assessment On Commercial Facilities Under Construction, as described in OAR 150-285C.170;

(b) Any (utility) property that is or will be centrally assessed by the Department of Revenue under ORS 308.505 to 308.665 is completely inapplicable;

(c) The exemption is good for not more than two successive years; and

(d) The relationship to ORS 285C.175 as described in section (1) of this rule is the same on relevant property (including but not limited to section (4) of this rule).

(3) The following may be exempt in the zone, but would not be under ORS 307.330:

(a) Property at a project site where there is no construction of or additions to a building or structure;

(b) Mere modifications to a building or structure;

(c) The case of a nonmanufacturing facility, even with less than a one-year re/construction period;

(d) Additional property that is not yet placed in service, even though a portion or element of the project, facility or structure has been completed, consistent with ORS 285C.180(5); or

(e) Machinery or equipment, even if it will:

(A) Not be installed in or affixed to a building, structure or addition thereto; or

(B) Remain personal property after installation.

(4) Irrespective that property might qualify under ORS 285C.175, the following situations are excluded from this exemption, although property may be exempt under ORS 307.330 to some extent:

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(a) Property had been exempt already at the same site in the zone under ORS 307.330 (for one year);

(b) The business firm is a hotel, motel or destination resort, regardless if the zone is listed in OAR 123-065-4260;

(c) The authorized business firm does not or will not necessarily own or lease the property;

(d) An eligible business firm that has applied but not been approved for authorization consistent with OAR 123-065-4345 by the April-1 filing due date; or

(e) As of the January 1 assessment date:

(A) Authorization is inactive under ORS 285C.165;

(B) Property is not yet located inside the boundary of the designated zone; or

(C) The zone is terminated.

(5) Pending approval for authorization as noted in subsection (4)(d) of this rule, the firm may file per subsection (2)(a) of this rule, and have property exempted as allowed under ORS 307.330, such that:

(a) After approval, exemption under ORS 285C.170 may be extended to other qualified property subject to criteria described in this rule; and

(b) The ongoing exemption of property shall continue to be ascribed to ORS 307.330 if allowed.

(6) The county assessor shall not exempt property specifically under ORS 285C.170, if the assessor has a reasonable and definitive reason to believe that:

(a) The property is or will not be qualified property, consistent with OAR 123-065-4500 to 123-065-4550 or 123-065-4590, when placed in service;

(b) The authorized business firm will not qualify under ORS 285C.200; or

(c) Other applicable requirements under ORS 285C.175 will not be met.

(7) In the face of significant doubts about conformance with the requirements of ORS 285C.170, the assessor may depend on reasonably requested information or confirmation from the firm or zone sponsor, before determining to the grant the exemption.

(8) Consistent with subsection (2)(c) of this rule, property exempted under ORS 285C.170 may not receive further exemption under ORS 307.330 beyond the cumulative two-year period, in cases where it may not (yet) qualify under ORS 285C.175.

(9) The exemption as described in this rule is not necessarily jeopardized in any way, even for such property that would not normally be exempt under ORS 307.330, in the event that the anticipated exemption under ORS 285C.175 is:

(a) Unclaimed under ORS 285C.220;

(b) Denied — that is, not granted; or

(c) Disqualified under ORS 285C.240.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.165, 285C.170 & 307.330

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4950

Purpose and Scope

OAR 123-065-4950 to 123-065-4990 implement how a qualified business firm receiving a three to five-year enterprise zone exemption from property taxes may avoid disqualification by paying the zone sponsor one year's worth of the exemption, in the event that the firm fails to meet a requirement under ORS 285C.240(1) that determines the firm's general qualification for receiving all of the exemption.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4960

Applicability of Payback Provisions

For purposes of ORS 285C.240(6), a qualified business firm's avoidance of disqualification through payment of the firm's enterprise zone tax savings for one year is allowed, only if:

(1) The firm fails to meet an employment, compensation, waiver or locally established requirement affecting an overall exemption on qualified property, pursuant to ORS 285C.240(1)(b), (c) or (d), and not for any requirement pertaining to the status of particular qualified property (see OAR 123-065-4580) or to the firm's eligibility under ORS 285C.135;

(2) The firm provides written notice under ORS 285C.240 to the zone sponsor or the county assessor by not later than July 1 of the year following the year in which failure as described in section (1) of this rule occurred;

(3) The firm maintains the business operations, for which the qualified property was being used or occupied, unless the firm can demonstrate that any discontinuation (shutdown) is only temporary;

(4) The firm has not previously used ORS 285C.240(6) to avoid disqualification of the exemption for any failure covered by section (1) of this rule; and

(5) The firm provides written proof to the county assessor that it has paid the full amount of the year's tax savings to the zone sponsor, not later than August 31 of the year following:

(a) The year in which the failure occurred; or

(b) The fourth year of exemption, in the case of failure to meet a requirement for an additional two years of exemption under ORS 285C.160, during (only) one of the first four exemption years.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4970

Payment of Tax Savings

For purposes of the payment by a qualified business firm as described in OAR 123-065-4960(5):

(1) The firm shall pay to the sponsor of the enterprise zone an amount equal to the additional taxes due, as the county assessor computed under ORS 285C.175(7), on all of the qualified property receiving the exemption in:

(a) The year in which the failure occurred; or

(b) The fourth year of exemption, consistent with OAR 123-065-4960(5)(b).

(2) The sponsor of the enterprise zone is responsible for enabling the firm to make the payment, by doing the following in a timely manner:

(a) Issuing an invoice for such payment to the firm (as necessary);

(b) Receiving such moneys; and

(c) Issuing a receipt or equivalent evidence of the amount paid by the firm.

(3) In invoicing, collecting, holding, or disbursing any moneys paid by the firm, the city or county governments of the zone sponsor shall establish the necessary accounts, special funds, procedures or documentation in accordance with ORS chapter 294 and applicable local laws.

(4) If the county assessor is not provided with proof that sufficient and timely payment has been made by the firm, the firm shall be disqualified for the exemption or exemptions covered by the requirement as described in OAR 123-065-4960(1), as normally provided under ORS 285C.240.

(5) If the firm is disqualified for an overall exemption, such that the firm owes taxes on the formerly exempt property, then such back taxes shall be reduced by any amount previously paid to retain the same exemption under ORS 285C.240(6), in accordance with this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4980

Distribution of Payment Among Cosponsors

In the case of an enterprise zone sponsor comprising two or more city or county governments:

(1) Any cosponsor may act as the initial depository for collecting the qualified business firm's payment as described in OAR 123-065-4970 and providing the firm with the requisite proof of payment, but at least one cosponsor must do so.

(2) The cosponsors may create joint mechanisms and arrangements to receive, hold or use such payments.

(3) The cosponsors may distribute the amount of any such payment among themselves through any mutually agreed method or formula.

(4) Unless pending a joint effort among the cosponsors as described in OAR 123-065-4990, if a distribution as described in section (3) of this rule is not effected within six months of the receipt of such payment, the full amount of the payment shall be distributed in equal portions to each city or county government that sponsor the zone, such that a government or entity holding such funds shall disburse the portions to the other government or governments without assessing any administrative fee.

(5) A zone sponsor is in no way obligated to maintain or repeat for future payments any of the elections and methods utilized in accordance with this rule for a given payment.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

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123-065-4990

Utilization of Payments

In accordance with ORS 285C.240(6)(b), the moneys collected through the payment by a qualified business firm shall be used for the benefit of residents of the enterprise zone and its immediate vicinity, such that:

(1) For a nonurban zone, the immediate vicinity will generally encompass (but is not necessarily limited to) the entire incorporated and urban growth area of any city sponsoring the zone, unless the city is relatively large, and only some parts of the zone boundary are in or near the city.

(2) Public, public/private or community-based activities, efforts or expenditures that acceptably benefit residents of the zone and its local area include but are not limited to the following:

(a) Job training, placement, skill development, career counseling and similar programs predominately involving such residents;

(b) Better educational opportunities, facilities and so forth that serve such residents;

(c) Planning, analyses or support for infrastructure, public safety or other public/community services or facilities that have the potential to stimulate commerce and employment growth in association with the zone;

(d) Programs that assist with financing or other matters for businesses largely started by or employing such residents;

(e) Improvements to environmental conditions, recreational resources or other qualities of the community; or

(f) Reasonable contributions to the management, marketing or other needs of the enterprise zone itself.

(3) These moneys may be combined with funds obtained from authorization filing fees or other resources associated with the enterprise zone or the local community.

(4) If the payment per cosponsor is less than \$1,000, the zone sponsor may:

(a) Delay spending the moneys for an indefinite period of time, pending complementary opportunities or resources; and

(b) Spend the moneys on existing programs and projects that are likely to benefit such residents, even if not exclusively.

(5) If the payment per cosponsor is between \$1,000 and \$10,000, the zone sponsor may:

(a) Postpone spending the moneys for up to two years; and

(b) Spend the moneys on existing programs and projects, but the sponsor shall make reasonable efforts to ensure that such residents in particular are beneficiaries of the additional expenditures.

(6) If the payment per cosponsor exceeds \$10,000 the zone sponsor shall see that the moneys are spent on ongoing programs, special projects and so forth, but only insofar as such expenditures can be shown to have a direct and particular impact on such residents.

(7) A zone sponsor is in no way obligated to maintain or repeat for future payments any of the elections and methods utilized in accordance with this rule for a given payment.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-7000

Purpose & Scope

OAR 123-065-7000 to 123-065-7999 specify matters related to Electronic Commerce areas and the tax incentives therein, including but not limited to enterprise zones authorized for electronic commerce, such that:

(1) In these areas, businesses engaged in Electronic Commerce are eligible for the standard enterprise zone exemption and may qualify for a State tax credit based on their Electronic Commerce investment.

(2) These administrative rules:

(a) Have no bearing on enterprise zones without electronic commerce status;

(b) Do not control the fiscal parameters for the actual implementation of tax abatements by the Department of Revenue; and

(c) Are not intended to supersede applicable administrative rules in OAR chapter 150.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.050(5), 285C.060(1), 285C.095(2)

Stats. Implemented: ORS 285C.050, 285C.095, 285C.100, 285C.135, 285C.185, 315.507 & 315.508

Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-7100

Definition of Electronic Commerce

As used in these administrative rules, for purposes of Electronic Commerce under ORS 285C.050(5):

(1) "Predominantly" means that the share of applicable transactional activity represented by Electronic Commerce exceeds 50 percent, as measured by receipts, number of orders or clients served (or an equivalent quantitative determination).

(2) Electronic Commerce means business activity and related investments that:

(a) Involve dealings with customers, suppliers, clients or other transactional entities external to the eligible business firm, predominantly by means of:

(A) Direct Internet use; or

(B) A computer network that utilizes the Internet as a platform.

(b) Entail, support or relate to the sale or purchase of goods, property or services, whether conducted on a wholesale, commercial, business-to-business, retail or other basis, in addition to subsection (1) of this rule.

(3) Electronic Commerce may include facilities, equipment, services, networks or software that are produced, operated or supplied by a third party, who facilitates, fosters or makes possible business transactions by means of Electronic Commerce consistent with sections (1) and (2) of this rule. Such a third party may be the qualified business firm for purposes of tax abatement.

(4) Electronic Commerce is not limited to the initiation or consummation of the sale, purchase or arms-length exchange, but rather may include a significant element of the transaction's overall completion or delivery, if that element:

(a) Is conducted predominantly by means of Electronic Commerce, as otherwise described in this rule, such as customer service, technical support, claims processing, client evaluation, performance measurement and so forth, even if the actual sale, purchase or contract was initiated or consummated through non-electronic means; or

(b) Naturally serves, underpins or arises from the sale or purchase of goods, property or services that are predominantly transacted by Electronic Commerce, as otherwise described in this rule, including but not limited to the following: Distribution, made-to-order assemblage, non-electronic customer support, shipping, warehousing, warranty service or any similar operation or order fulfillment-type activity.

(5) Section (4) of this rule may be understood in terms of a flowchart representing the totality of operations within the zone related to Electronic Commerce, such that if a critical node in that flowchart is handled more than 50 percent through Internet-based transactions, then:

(a) Substantially related activities both upstream and downstream of the node are also included in the definition of Electronic Commerce; and

(b) Qualified property or investment in capital assets are covered by the respective tax benefits, as much as they are otherwise allowed to be.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.050(5) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.135, 285C.180, 285C.185, 315.507

Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-7200

Enterprise Zones and Electronic Commerce

For purposes of an enterprise zone authorized or designated for Electronic Commerce under ORS 285C.095:

(1) It may be any enterprise zone designated by the Director and defined under ORS 285C.050(8), regardless of how or when, or whether it is urban or nonurban, but the effective date of designation of the enterprise zone must precede or coincide with authorization of Electronic Commerce status.

(2) If for whatever reason the underlying enterprise zone terminates, Electronic Commerce status ends too, without harm to any exemption from property taxes due to an authorized business firm consistent with ORS 285C.245(1).

(3) Electronic Commerce status applies fully to the entire area of an enterprise zone including areas added by a subsequent change to the zone's boundary.

(4) The sponsor of an enterprise zone with Electronic Commerce status may revoke that status by resolution(s), such that:

(a) The Director shall order the revocation of Electronic Commerce status in that zone, setting the effective date thereof;

(b) Any business firm eligible only on that basis shall, again, be treated as if the zone had terminated on the date specified by the Director; and

(c) That enterprise zone may never again be authorized for Electronic Commerce status.

(5) Respective to section (2) or (4) of this rule, the Department shall seek applications from zone sponsors, either subsequently, or in anticipation under ORS 285C.250 for a zone to be Terminated by Statute, which has no special claim on re-designation for Electronic Commerce.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.095

Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

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123-065-7300

Application and Designation

(1) An application in accordance with ORS 285C.095 must consist of at least two sets of items:

(a) Resolutions adopted by each governing body of the sponsor, consistent with its charter, by-laws and practices, and requesting designation for Electronic Commerce; and

(b) A completed form as prescribed by and available from the Department and any supporting materials.

(2) For the Department to evaluate the merit of authorizing the applicant zone for Electronic Commerce status (including but not limited to competitive ranking of concurrent applications) an applicant zone sponsor may respond as stipulated in the application form to the following criteria:

(a) Significance associated with the location and attributes of the cities, business sites and so forth that are in the current zone boundary, as well as future boundary change requests (to be considered, any such boundary change must be acknowledged in the resolution of the sponsoring jurisdiction containing the area to be added);

(b) Strategic or marketing plans, resources and readiness of the enterprise zone for local development relating to Electronic Commerce, especially as a result of major public investments;

(c) Past success in using the statutory and local incentives of the enterprise zone for inducing business development, and other comparable programs or tools;

(d) Interest and support among local businesses, community organizations and the general public for having the enterprise zone obtain Electronic Commerce status;

(e) Other local assets that support and complement Electronic Commerce activity or investments (e.g., training institutions, telecommunication infrastructure, environmental initiatives);

(f) Prospective, qualifying Electronic Commerce investments that could depend on the tax incentives; or

(g) One other factor of the applicant's choosing.

(3) In determining if an applicant enterprise zone is to be designated for Electronic Commerce, the Director shall consider the results of analysis by staff/external parties of criteria in section (2) of this rule, but may also rely on other information from any source.

(4) The Director shall make a final determination, which may not be appealed, regarding which, if any, applicant zones to order for Electronic Commerce designation, and may choose not to use all such designations even in the face of sufficient applications.

(5) The Department shall promptly give written notification to any applicant zone sponsor rejected for Electronic Commerce designation.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.095(2)

Stats. Implemented: ORS 285C.095

Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-7400

Enterprise Zone Designations

(1) If additional Electronic Commerce designations are allowed under ORS 285C.095 by the Legislature, the Department shall schedule and conduct a round of applications in accordance with OAR 123-065-7300, pursuant to the distribution of information about the round to the local zone managers of all existing enterprise zones.

(2) January 1, 2002, is the effective date of designation for the first four Electronic Commerce enterprise zones.

(3) At the time of the adoption of this rule, the enterprise zones designated for Electronic Commerce are Harney County/Burns/Hines, Medford Urban, N/NE Portland and Roberts Creek.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.050(2), 285C.060(1) 285C.095(2)

Stats. Implemented: ORS 285C.095, 285C.135, 285C.180, 285C.185, 315.507

Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-7500

Other Electronic Commerce Areas

(1) The City of North Plains in Washington County is a city designated for Electronic Commerce under ORS 285C.100, effective on March 4, 2002.

(2) On and after this effective date of declaration in the city's resolution, all area then or later inside the city limits or urban growth boundary of the City of North Plains shall be considered and treated equivalent to an enterprise zone, but only for purposes of Electronic Commerce and business firms that are eligible on that basis, under ORS 285C.050 to 285C.250 and 315.507.

(3) The city shall act as the effective zone sponsor and take responsibility for all duties of a zone sponsor as they apply to any business firm seeking to utilize areas of the city for special Electronic Commerce benefits.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285B.650, 285B.675, 285B.707, 285B.713 & 315.507

Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-7600

Enterprise Zone Eligibility

(1) A business firm engaged in Electronic Commerce and located in an Electronic Commerce enterprise zone may be eligible in other ways under ORS 285C.135, but it shall not be subject to the requirements or restrictions that these other ways entail.

(2) If an eligible business firm that originally sought eligibility based on Electronic Commerce is found to not satisfy the definition thereof, it may still be authorized or its qualified property exempt subject to another way of eligibility and the applicable requirements of the law.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135

Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-7700

Enterprise Zone and Electronic Commerce Tax Credit

For purposes of the tax credit under ORS 315.507:

(1) The capital assets comprising the Electronic Commerce investment under ORS 315.507(2) do not necessarily correspond to qualified property exempted under ORS 285C.175, although there will likely be some overlap, and such assets must:

(a) Be located in the enterprise zone (or other such designated area); and

(b) Concurrently relate to the investment in qualified property as described in section (2) of this rule.

(2) The investment in Electronic Commerce capital assets by the business firm engaged or preparing to engage in Electronic Commerce must be effectively made:

(a) During the remainder of the income/excise tax year after the firm is authorized;

(b) In an income/excise tax year that begins while the firm remains actively authorized but ends before July 1 of the first property tax year of exemption; or

(c) In an income/excise tax year that ends on or after July 1 of a property tax year, in which the qualified property is exempt under ORS 285C.175, as subject to satisfaction of applicable requirements under ORS 285C.050 to 285C.250.

(3) The third year after a credit is claimed as described in subsection (2)(a) or (b) of this rule must be a year described in subsection (2)(c) of this rule, in order to receive and keep the tax credit.

(4) This tax credit is not available in conjunction with the exemption under ORS 285C.409 (Long-Term Rural Tax Incentives).

(5) The tax credit is allowed only:

(a) For an eligible Electronic Commerce business firm that applies for authorization on or after the effective date of the Electronic Commerce designation but prior to a revocation of that designation.

(b) On applicable investments in capital assets that are made on or after the effective date of the Electronic Commerce designation but before the effective date of termination of the enterprise zone under ORS 285C.245, irrespective of any prior revocation of the Electronic Commerce designation.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.050(5) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.095, 285C.100, 285C.135, 285C.140, 285C.175, 285C.180, 285C.185, 315.507 & 317.508

Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-8000

Purpose and Scope

OAR 123-065-8000 to 123-065-8499 specify matters related to the creation and operation of an "RREDZ," which as used in these administrative rules means a rural renewable energy development zone under ORS 285C.350 to 285C.370, such that:

(1) For an eligible business firm in an RREDZ, the standard enterprise zone exemption and associated requirements under ORS 285C.050 to 285C.250 apply essentially as they do inside an enterprise zone, except:

(a) That the firm and the firm's property qualify only insofar as they relate to facilities and activities that generate electricity from a "renewable energy resource" under ORS 469.185, including but not limited to the support or maintenance of relevant facilities; and

(b) As described in OAR 123-065-8300 and 123-065-8400.

(2) The primary purpose of RREDZs is the extension of this enterprise zone incentive to renewable energy projects, which may be far-flung or widely dispersed, in lieu of what might often involve an infeasible or

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physically complex amendment to the boundary of an existing enterprise zone.

(3) These administrative rules:

(a) Have no bearing on true enterprise zones, including but not limited to an enterprise zone or an eligible business firm or qualified property in an enterprise zone encompassed by an RREDZ;

(b) Do not necessarily control the fiscal parameters for the actual implementation of tax abatements by the county assessor or Department of Revenue; and

(c) Are not intended to supersede any applicable administrative rule in OAR chapter 150.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.370

Stats. Implemented: ORS 285C.350 - 285C.370

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-8100

Basic Points about RREDZs

(1) An RREDZ does not terminate by operation of law after any maximum length of time

(2) An RREDZ covers the entire territory of the designated:

(a) City including subsequent annexations; or

(b) County or counties whether outside corporate limits or not.

(3) An RREDZ is permitted anywhere in this state, except in one of the counties listed in OAR 123-065-0090(5).

(4) RREDZs come in one of only the following three types:

(a) City RREDZ, in that a single city's governing body applied to the Department for designation, and the city is the sponsor of the RREDZ;

(b) County RREDZ, in that a single county's governing body applied to the Department for designation, and the county is the sponsor of the RREDZ; or

(c) Multi-county RREDZ, in that each governing body of two or more counties jointly applied to the Department for designation, such that:

(A) The counties are contiguous one to another, but do not necessarily all share a single common border in the case of three or more counties; and

(B) Only one of the counties serves as the zone sponsor.

(5) In appointing the local RREDZ manager, the sponsor is encouraged to select someone, who also serves as local zone manager for an enterprise zone, whenever possible.

(6) There is no particular limit on the number of RREDZs statewide, although a city or county may not have two or more concurrent designations, with the following distinctions:

(a) A city may have a designation, even if inside a county designated as an RREDZ; or

(b) A county may itself be designated an RREDZ and be part of an RREDZ with one or more other counties, but it may not belong to two or more different, multi-county RREDZs.

(7) The RREDZ exemption under ORS 285C.362 on the qualified property of a qualified business firm may not be derived from more than one overlapping RREDZ designation, except if there are two or more authorizations covering property in different tax lots.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.370

Stats. Implemented: ORS 285C.350 - 285C.370

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-8200

Designation of an RREDZ

(1) To apply for designation of an RREDZ under ORS 285C.353, the city, county or multiple counties shall furnish the Department with the following:

(a) Copy of the resolution(s) requesting designation, as duly adopted by each jurisdiction within the past 90 days;

(b) The documentation as stipulated in OAR 123-065-1050; and

(c) A formal statement that specifies the following:

(A) The jurisdiction(s) to be so designated, and in the case of a multi-county RREDZ, the county that would act as the sponsor; and

(B) Current status of any previous RREDZ designation in the jurisdiction(s), including but not limited to the unused portion of the \$100-million exemption limitation under ORS 285C.353(4).

(2) Subject to the accuracy and completeness of the materials provided consistent with this rule and any other information as the Department may request, as well as adherence to applicable laws and these administrative rules:

(a) The designation shall be approved by the Director; and

(b) The date of designation may be made effective as early as when the Department received a complete application, if so requested by the applicant.

(3) Termination of an RREDZ may occur in accordance with ORS 285C.245(4) or (5) (with equivalent protection and allowances under ORS 285C.245(1) for any authorized or qualified business firm in the RREDZ at that time, as would be the case for an enterprise zone), such that:

(a) For a multi-county RREDZ all counties must adopt a resolution seeking termination under ORS 285C.245(4), not only the sponsor; and

(b) An RREDZ may not later be redesignated if it corresponds to the one so terminated.

(4) If the application is for a subsequent additional designation corresponding to an existing RREDZ, then upon designation the existing RREDZ automatically terminates, such that effective on January 1 at the beginning of the next assessment year:

(a) Any authorized business firm in the previous RREDZ is assigned to the newly designated RREDZ for purposes of future qualification; and

(b) Any unused portion of the previous RREDZ's \$100-million exemption limitation under ORS 285C.353(4) ceases to exist.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.370

Stats. Implemented: ORS 285C.350 - 285C.370

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-8300

Limitation of \$100-million in Real Market Value

Under ORS 285C.353(4), each RREDZ designation allows for cumulative exemptions on qualified property of not more than \$100 million of value over the life of the RREDZ, such that:

(1) Value is measured by the property's real market value (RMV) as assessed on January 1 of the first year, for which the exemption is claimed by an authorized business firm in that RREDZ.

(2) The sponsor shall coordinate with the county assessor to track the amount of this limitation that has been used by former/ongoing exemptions and the unused portion thereof. (If affected property is later disqualified and property taxes paid back, then the associated RMV is added back to the unused portion for future use in the same RREDZ)

(3) If the \$100 million will be exhausted in a single year by new qualified property first subject to exemption in that year, then the exemption or exemptions shall be granted only up to the point, at which the property's RMV equals the unused portion; in the case of two or more qualified firms the unused portion shall be pro-rated among them commensurate with the total value of each one's property.

(4) In view of such exhaustion, the sponsor of the RREDZ may seek a subsequent additional designation, such that the new \$100-million allocation may be added to and used in combination with the unused portion of the previous RREDZ, but only if:

(a) Some of the previous allocation was used in exempting prior qualified property;

(b) The real market value of the new qualified property exceeds \$100 million; and

(c) The new designation takes effect:

(A) On or after the January 1 assessment date; and

(B) Before the beginning of the corresponding property tax year.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.370

Stats. Implemented: ORS 285C.350 - 285C.370

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-8400

Further Distinctions from an Enterprise Zone Exemption

Other differences for an RREDZ exemption in contrast to the provisions of ORS 285C.050 to 285C.250 include (but are not necessarily limited to) the following:

(1) The application for authorization must give special attention to characterizing the proposed investment in qualified property, clarifying how it relates to renewable energy, and estimating its real market value by January 1 of the first full calendar year of operations.

(2) To be exempt, the qualified property must essentially correspond to what is described in the application [comparable to a headquarter-type facility under ORS 285C.180(2)(g)].

(3) For purposes of an additional one or two years of exemption on qualified property (following the standard three-year period) inside a county that is a contiguous part of the RREDZ, but that is not the sponsor of the RREDZ:

(a) At least 21 calendar days before execution of the requisite written agreement between the sponsor and the eligible business firm (prior to authorization), the sponsor shall give the county's governing body formal notice of the potential extension to the tax abatement period; and

(b) If on or before the date, on which the written agreement is executed, the county's governing body adopts a resolution electing not to par-

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ticipate, then the extended abatement is disallowed for the proposed investment in qualified property in that county.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.370
Stats. Implemented: ORS 285C.350 - 285C.370
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1000

Purpose and Scope

(1) The purpose of this division of administrative rules is to implement ORS 461.740, under which business firms are required to enter into a First Source Agreement if benefiting from funds derived from the Oregon State Lottery through certain economic or community development programs, as determined by the Oregon Economic and Community Development Department.

(2) Provisions of this division of administrative rules also apply to businesses benefiting under the following tax incentive programs, as provided by the relevant statutes:

(a) The "Strategic Investment Program" under ORS 285C.600 to 285C.620 and 307.110(4) and 307.123, as specified in division 023 of this chapter of administrative rules; and

(b) The "enterprise zones" under ORS 285C.050 to 285C.250, as specified in division 065 of this chapter of administrative rules and OAR chapter 150.

(3) Requiring Benefited Businesses to enter into a First Source Agreement is intended to help individuals, who are already receiving job training and assistance supported by public funds, by linking these individuals with private sector employment opportunities of businesses that:

(a) Will be hiring in association with the receipt of public benefits; and

(b) Should make a good faith effort to hire and retain such individuals, who are presumed to have low incomes or otherwise face disadvantages in finding employment.

(4) First Source Agreements and this division of administrative rules are not intended to do the following:

(a) Guarantee employment for any such individual;

(b) Dictate the actual hiring by a Benefited Business; or

(c) Necessarily accomplish other public or social objectives associated with employment opportunities.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.215(3)

Stats. Implemented: ORS 285C.060, 285C.175, 285C.215, 285C.606, 461.740

Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0300; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1100

Definitions

For purposes of this division of administrative rules, unless the context demands otherwise:

(1) **Contact Agency** is defined as the entity designated to represent publicly funded job training providers as specified in OAR 123-070-1200(3)(a), and it shall designate a Contact Person, which means an accessible and appropriate staff person at the Contact Agency, who is charged with interacting with Benefited Businesses and other entities and with representing the Contact Agency on matters related to First Source Agreements.

(2) **Department** means the State of Oregon's Economic and Community Development Department as (re) organized under ORS 285A.070.

(3) **Director** means the Director of the Department appointed under ORS 285A.070, for whom the Department's Deputy or Assistant Director, or any other designee may substitute.

(4) **First Source Agreement** means the contract between a Benefited Business and Providers, as executed by a Contact Agency, under this division of administrative rules, and it has the same meaning as "first-source hiring agreement" as used in ORS 285C.050(10), 285C.606(4) and 461.740(4)(b), which covers and is applicable to all of the Benefited Business's hiring or job openings, except for those persons or positions that are:

(a) Hired solely to construct, renovate or install property;

(b) Excluded by a waiver in accordance with OAR 123-070-1500; or

(c) Specified in OAR 123-070-2100 as inapplicable for enterprise zone purposes.

(5) As used in ORS 461.740(1), "good faith effort to hire and retain as employees low-income individuals who have received job training assistance from publicly funded job training providers" means the Benefited Business will do whatever is reasonably feasible to honor the terms of the

First Source Agreement entered into with the Contact Agency for local Providers as specified in OAR 123-070-1700.

(6) **Interagency Agreement** is the agreement entered into among Providers as specified in OAR 123-070-1200.

(7) **Provider** has the same meaning as "publicly funded job training provider," as used in ORS 285C.050(15), 285C.606(4) and 461.740(4)(c) and means one of the following:

(a) A local office of the Oregon Department of Human Services that delivers the JOBS Program or other training or employment services for low-income parents, seniors, persons with disabilities and so forth;

(b) An administrative agent for programs under the federal Workforce Investment Act of 1998 (Public Law 105-220) or amendments thereto;

(c) A community college of this state;

(d) A government or government-supported entity, similar to those in subsections (a) to (c) of this section, that is directly or indirectly engaged in training or assisting people to perform or succeed in the workplace or in a particular occupation; or

(e) Any other entity that is a party to the Interagency Agreement as described in OAR 123-070-1200, but such inclusion is effective only insofar as the entity, including but not limited to a local office of this state's Employment Department, remains such a party.

(8) **Qualified Applicants** means individuals who have received job training assistance and who meet the Benefited Business's minimum requirements for education, experience, reliability and skills, or who are able to meet these requirements within a reasonable time period (as negotiated with the Benefited Business) with training provided either by the Benefited Business or by a Provider.

(9) As used in sections (5) and (8) of this rule, "received job training assistance" means the individual has received intake or other services from a Provider.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.215(3)

Stats. Implemented: ORS 285C.050, 285C.060, 285C.215, 285C.606 & 461.740

Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0310; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1150

Affected Businesses

For purposes of this division of administrative rules:

(1) A **Benefited Business** means any for-profit business firm (regardless of its form of ownership or organization) that benefits directly or substantially from a state lottery-funded program, as indicated below in this section:

(a) Any of the following programs, throughout this state, except as set forth in section (3) of this rule:

(A) Oregon Business Development Fund (ORS 285B.050 to 285B.098);

(B) Strategic Reserve Fund (ORS 285B.266); or

(C) Special Public Works Fund (ORS 285B.410 to 285B.482).

(b) The Regional Investment Fund (ORS 285B.260 and 285B.263) and the Rural Investment Fund (ORS 285B.254 and 285B.257), except as set forth in section (3) of this rule, but only in a region as described in OAR 123-070-1300(3).

(c) Any program financed by state lottery funds and administered by the Department, as so determined by the Director, including but not limited to industry development activities under ORS 285B.280 to 285B.286.

(2) A **Benefited Business** also means either of the following, regardless if section (1) of this rule applies too:

(a) An "authorized business firm" as defined under ORS 285C.050(2) for an enterprise zone exemption on qualified property from ad valorem taxation under ORS 285C.175; or

(b) A business firm approved to receive or receiving the partial exemption of property from ad valorem taxation as an eligible project of the Strategic Investment Program under ORS 285C.600 to 285C.620.

(3) Regardless of association with a program in subsection (1)(a) or (b) of this rule, a business firm is **not** a "Benefited Business" solely because it receives any of the following from the Department, a grantee or any other entity:

(a) A purchase order or contract to provide services;

(b) Funds strictly for marketing or research activities; or

(c) Any grant or loan of \$50,000 or less.

(4) "Benefits directly ... from any program financed by state lottery funds" as used in ORS 461.740(4)(a) and section (1) of this rule means the

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business firm is receiving money by way of a loan or grant directly from the Department or a grantee as described in OAR 123-070-1300(2).

(5) "Benefits substantially ... from any program financed by state lottery funds" as used in ORS 461.740(4)(a) and section (1) of this rule means that the business firm:

(a) Receives benefits through infrastructure or facility improvements financed by an entity that is receiving state lottery-funded loan or grant assistance to immediately make such improvements; and

(b) Was given prior notice from the Department or the entity that the First Source Agreement was a condition for the facility or infrastructure improvements or modifications arising from lottery funds.

(6) "Local zone manager" means a person appointed by the sponsor of the enterprise zone under ORS 285C.105(1)(a).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.050, 285C.060, 285C.175, 285C.215, 285C.606 & 461.740
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1200

Local Interagency Agreement

(1) The Providers as defined in OAR 123-070-1100(7) that serve a common, defined geographic area shall enter into a written Interagency Agreement for that area.

(2) The Providers entering into the local Interagency Agreement shall design a process by which Qualified Applicants are directed to Benefited Businesses in the geographic area covered by the Interagency Agreement through a mutually agreed source of job referral. The use of this referral source shall not preclude the Providers from developing joint processes for intake, screening or selecting Qualified Applicants to be referred to a Benefited Business.

(3) The written Interagency Agreement among the local Providers shall contain the following elements:

(a) Which Provider shall be the Contact Agency in negotiating and signing First Source Agreements and in coordinating job referrals with Benefited Businesses;

(b) The geographic area to be covered by the Providers entering into the Interagency Agreement;

(c) What services will be offered to the Benefited Businesses and the entities responsible for providing these services;

(d) A description of the process by which Qualified Applicants will be selected and referred to Benefited Businesses with a First Source Agreement;

(e) The process for collecting and transmitting data to the Contact Agency, state agencies or other entities as appropriate or necessary;

(f) Any necessary conditions to assure the confidentiality of information collected or used through the Interagency Agreement;

(g) Any conditions pursuant to OAR 123-070-1800(2) as agreed to by all parties to the Interagency Agreement; and

(h) A sample First Source Agreement to be entered into by the Contact Agency and Benefited Businesses, which shall be updated and revised in accordance with this division of administrative rules and applicable state laws, and a copy submitted to the Department.

(4) The approved Interagency Agreement may be modified or amended, but proposed modifications or amendments shall be submitted in writing to the Department for review and may be disallowed for cause by action of the Director.

(5) The Providers in the relevant geographic area shall modify or amend the Interagency Agreement to keep it current in terms of its parties, applicable laws, this division of administrative rules and so forth.

(6) The Contact Agency shall notify the Department and any affected local zone manager or county assessor for an enterprise zone within the geographic area of the Interagency Agreement, within 10 business days, whenever there is change in the Contact Person or Contact Agency.

(7) All submissions to the Director or the Department under this rule shall be addressed "**Attention: Finance & Incentives.**"

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.060 & 461.740
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0340; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1300

Administration for Lottery-Funded Projects

(1) For the lottery-funded programs listed in OAR 123-070-1150(1)(a), the Department shall take anticipatory actions that are necessary and appropriate to implement the requirement of the First Source Agreement in accordance with ORS 461.740, which may include but are

not limited to requiring a Benefited Business to submit a copy of the First Source Agreement, or otherwise ensuring that one has been entered into, before the grant or loan is ultimately awarded.

(2) The responsibilities consistent with section (1) of this rule may be delegated by the Department to a grantee that is the direct recipient of lottery-derived funds and that provides the grant, loan or substantial benefits to the Benefited Business.

(3) A business firm benefiting from the Regional Investment Fund or the Rural Investment Fund is a Benefited Business, if and only if the respective regional investment strategy under ORS 285B.230 to 285B.269:

(a) Expressively requires such firms to enter into a First Source Agreement; and

(b) Effectively provides that the regional board or its designee (fiscal entity) assumes all responsibility for the following:

(A) Advising Benefited Businesses of the requirement in a timely manner;

(B) Necessary communications and coordination with affected Contact Agencies; and

(C) Ensuring the requirement is met before awarding the relevant grant or loan.

(4) For purposes of the regional choice described in section (3) of this rule:

(a) The respective regional investment strategy is the same one that provides for and implements the funding for the Benefited Business;

(b) The regional board's fiscal entity is a "grantee" as described in section (2) of this rule; and

(c) The requirement of entering into a First Source Agreement:

(A) Shall apply equally to all such funded projects or activities unless excluded by OAR 123-070-1150(3) or 123-070-1500;

(B) May be prospectively retracted or exercised pursuant only to the biennial update and an approved implementation strategy under ORS 285B.242(7); and

(C) Is enforceable under state law only if all of section (3) of this rule is accordingly and substantially satisfied.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 461.740

Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0320; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1500

Waivers and Geographic Coverage of First Source Agreements

(1) Except in the case of the Strategic Investment Program, the Director may issue a waiver that does the following:

(a) Relieves a Benefited Business of the requirement of entering into the First Source Agreement, entirely; or

(b) Excludes professional, managerial, technical, highly skilled or seasonal positions of a Benefited Business from the First Source Agreement.

(2) The waiver under section (1) of this rule may be granted by the Director, who shall make the final decision, upon written recommendation by Department staff that explains why:

(a) The Benefited Business's small size or the technical, professional or unusual nature of its needs with respect to employees means that it will generally be unable to fill positions with persons referred by the Providers for much of its anticipated jobs openings or for the excluded positions, as defined in the waiver, and will thus receive little or no meaningful service through the First Source Agreement; or

(b) The waiver will further the goals or purposes of applicable and specified state policies, whether or not such policies are directly associated with the program.

(3) A Benefited Business may submit a written request to Department staff for a waiver under this rule at the time of application for the grant or loan assistance, or before the contract for such assistance is signed, in the case of lottery-funded programs, or at any time prior to qualifying for an enterprise zone exemption.

(4) Department staff will notify the Benefited Business and the Contact Agency for the geographic area in which the Benefited Business is located of the Director's decision and send a copy of any approved waiver. Such notice and distribution shall also include other entities as described in OAR 123-070-2400(5), as applicable for an enterprise zone exemption.

(5) Except as specified in OAR 123-070-2100 for an enterprise zone exemption, the First Source Agreement entered into by a Benefited Business shall apply only to the Benefited Business's operations at the site receiving the benefit, unless other locations are designated by the Department or specifically agreed to by the Benefited Business and the Contact Agency.

ADMINISTRATIVE RULES

(6) For purposes of this rule, "Department staff" means any professional personnel of the Department responsible for relevant administration of the tax incentive program or of the lottery-funded project involving the Benefited Business.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.215(3)
Stats. Implemented: ORS 285C.060, 285C.215 & 461.740
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 9-1991, f. 9-6-91, cert. ef. 9-9-91; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0330; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1600

Duration of First Source Agreements

For purposes of a First Source Agreement:

(1) The term of agreement shall begin on or before the first date of any new hiring activity associated with employees for the benefited investment of the Benefited Business.

(2) The term of agreement shall end, as follows:

(a) Under state lottery-funded programs listed in OAR 123-070-1150(1), no less than 18 months from the date that the Benefited Business begins to request referrals under the First Source Agreement, unless a longer period is specified in the body of the First Source Agreement.

(b) Under tax incentive programs listed in OAR 123-070-1150(2), when the property tax exemption period concludes, which shall occur:

(A) On December 31 of the final year of exemption; or

(B) Sooner, in cases where an enterprise zone authorization application or exemption claim is formally withdrawn, or the exemption is disqualified or terminated by the county assessor, and the Benefited Business either does not exercise or has exhausted its right to appeal the refusal, denial, disqualification or termination.

(3) If a Benefited Business is to qualify for an enterprise zone exemption on additional property under an ongoing investment/authorization or on another investment pursuant to an additional authorization, then (if not already contemplated and addressed in the outstanding First Source Agreement) either:

(a) The term of the outstanding First Source Agreement must be extended until the Benefited Business's final exemption for that zone ends, per subsection (2)(b) of this rule, through an amendment acknowledged by both the Benefited Business and the respective Contact Agency; or

(b) The Benefited Business must enter into a new First Source Agreement with the respective Contact Agency that terminates and replaces the outstanding one, and that expires when the Benefited Business's final exemption for that zone ends, per subsection (2)(b) of this rule.

(4) Nothing shall hinder or prevent a Benefited Business and a Contact Agency from mutually continuing to function under the arrangements of a First Source Agreement, even though the agreement is no longer in force, as stipulated by this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.060, 285C.215, 285C.606 & 461.740
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1700

Provisions of the First Source Agreement

(1) The First Source Agreement shall contain at least the following provisions in substantially the form presented here:

(a) "This First Source Agreement for referral of qualified job applicants is entered into between:

(A) "The following entity, _____ (hereinafter referred to as the 'CONTACT AGENCY'), which coordinates job referrals for, and represents, the following other publicly funded job training providers for the geographic area covered in the Interagency Agreement as described in OAR 123-070-1200, _____ (hereinafter referred to as the 'PROVIDERS'); and

(B) "The following business firm, located in this geographic area, _____ (hereinafter referred to as the 'EMPLOYER').

(b) "The EMPLOYER is or will be receiving benefits from the following program or programs (check those that apply):

(A) "___ State lottery-funded program, specify: _____;

(B) "___ Enterprise zone program, specify 'yes' or 'no': ___ if seeking an extended exemption period (up to five years);

(C) "___ Other, specify: _____.

(c) "Under this First Source Agreement, the EMPLOYER will use the CONTACT AGENCY as its first source for external referral of Qualified Applicants for all job openings of the EMPLOYER at the following location(s): _____, such that the EMPLOYER agrees to the following:

(A) "To effectively notify the CONTACT AGENCY of all job openings, no later than when notification is received by any other job referral

source external to the EMPLOYER or any public announcement for the job opening, throughout the term of this agreement;

(B) "That each such notice to the Contact Agency shall include job qualifications and a deadline for referrals;

(C) "To ensure that the CONTACT AGENCY and the PROVIDERS will have sufficient:

(i) "Lead time (minimum lead time is ___ business days before the job application close date, except in temporary or emergency situations); and

(ii) "Information to make meaningful referrals for jobs that will be filled by the EMPLOYER;

(D) "That all job information may be shared with all PROVIDERS for which referrals are coordinated by the CONTACT AGENCY; and

(E) "That all job openings shall be listed in the 'public labor exchange system' of the state Employment Department, insofar as a local office of that state agency is a PROVIDER.

(d) "The CONTACT AGENCY agrees to the following:

(A) "That to the extent that Qualified Applicants are available among the relevant PROVIDERS, to refer those individuals to the EMPLOYER for job openings; and

(B) "To facilitate and implement the listing of all job openings in the 'public labor exchange system', in cooperation with other PROVIDERS (though, not necessarily to the exclusion of other referral methods).

(e) "The EMPLOYER agrees to:

(A) "Fully consider for employment any Qualified Applicant referred by the CONTACT AGENCY by the referral deadline;

(B) "Notify the CONTACT AGENCY when a Qualified Applicant is hired by the EMPLOYER; and

(C) "Provide after-the-fact information to the CONTACT AGENCY about applicable overall hiring and job vacancies in the following manner: _____, or as requested by the Contact Agency, in accordance with OAR 123-070-1900(1) to (3).

(f) "The EMPLOYER agrees to comply with all relevant laws regarding employment of Qualified Applicants of this state or the federal government, including but not limited to not discriminating on the basis of race, color, religion, ancestry, national origin, political affiliation, sex, age, marital status, sexual orientation, physical or mental disability, or any other inappropriate reason prohibited by such laws.

(g) "The EMPLOYER will make all final decisions on hiring new employees. After the EMPLOYER has hired the employees, the EMPLOYER assumes full responsibility for them as employees.

(h) "All persons hired under this Agreement are subject to the EMPLOYER's regular personnel policies and procedures and have no special or additional rights arising from this Agreement.

(i) "If the terms of this Agreement conflict with the provisions of a collective bargaining agreement to which the EMPLOYER is a party, the bargaining agreement shall prevail.

(j) "Both the CONTACT AGENCY and EMPLOYER agree to attempt to resolve all areas of misunderstanding, disagreement or dissatisfaction with each other as soon as they arise. If the parties are unable to resolve the issue, either may:

(A) "Initiate a meeting between the EMPLOYER and either the CONTACT AGENCY or all of the PROVIDERS; or

(B) "Request assistance from the Oregon Economic and Community Development Department.

(k) "This agreement shall take effect on the date of the last signature by the contracting parties below, and shall be in full force and effect until _____, 20__ (or, until the end of the term, period or periods as described in OAR 123-070-1600).

(l) "APPROVED:

(A) "CONTACT AGENCY: By _____ Name
_____ Title _____ Date _____ Address

Phone _____.

(B) "EMPLOYER: By _____
Name _____ Title _____
Unemployment Insurance Account Number _____ Address
_____ Phone
_____."

(2) The First Source Agreement under this rule may be substantively modified or amended only as described in OAR 123-070-1800.

(3) A Benefited Business's performance under the First Source Agreement is not, in and of itself, a condition for the Benefited Business to receive the benefit of a program listed in OAR 123-070-1150(1) or (2), except for the following:

ADMINISTRATIVE RULES

(a) Compliance with provisions added consistent with OAR 123-070-1800(3); or

(b) Adherence to requirements for data reporting as specified through OAR 123-070-1900(4) and (5).

(4) The failure of a First Source Agreement, as entered into by a Benefited Business, to conform with the stipulations of this division of administrative rules shall in no way jeopardize the Benefited Business's status as having entered into a First Source Agreement, so long as the Benefited Business takes reasonable efforts to rectify any significant error or omission in the First Source Agreement, as requested by the Contact Agency, enterprise zone sponsor or Department, none of which shall be liable in any way for such an error or omission.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.060, 285C.105, 285C.215, 285C.606 & 461.740
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0350; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1800

Local/Case-Specific Modifications to the First Source Agreement

For purposes of OAR 123-070-1700, the First Source Agreement may be modified or amended as follows, but only insofar as such modification or amendment neither alters nor nullifies the clear expression or the intent of any provision in OAR 123-070-1700(1):

(1) The Contact Agency or the Providers under the Interagency Agreement covering the geographic area in which the Benefited Business is located may add other substantive provisions or components to the First Source Agreement, but only through and pursuant to mutual consent by the Benefited Business, unless otherwise allowed in sections (2) or (3) of this rule or for data reporting as described in OAR 123-070-1900(4) and (5).

(2) As initiated or agreed to by the Contact Agency and Providers, a locally developed model First Source Agreement may include provisions that are conditions for receiving local administered incentives that are in addition to state lottery or property tax benefits. Such conditions do not, however, affect the benefits of programs listed in OAR 123-070-1150(1) or (2).

(3) With the consent and approval of the sponsor of an urban enterprise zone, the Contact Agency may add local conditions that are derived directly from the policy adopted by the sponsor under ORS 285C.150 to the regular format of the First Source Agreement that is used for the Benefited Businesses in that zone, and such additional provisions of the First Source Agreement shall be conditions for the enterprise zone property tax exemption consistent with the standards in the zone sponsor's policy

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.060, 285C.105, 285C.215, 285C.606 & 461.740
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1900

Potential Data Collection

(1) For purposes of OAR 123-070-1200(3)(e) and 123-070-1700(1)(e), the Contact Agency may collect and compile data by Benefited Business and by referring agency (Provider), and may specify in the First Source Agreement a schedule and method by which a Benefited Business submits or confirms data, for the following items:

(a) The Benefited Business's name, address and State Business Identification Number (BIN/unemployment insurance account number);

(b) The number and names of all persons referred to each Benefited Business through a First Source Agreement with the Contact Agency;

(c) The number of such referrals and the names of referred persons who were hired by the Benefited Business;

(d) The total number of individuals hired by each Benefited Business; or

(e) A consolidated list of applicable job openings, whether filled or unfilled, even if vacated or refilled.

(2) Any data collection under this rule shall be performed no more frequently than as follows, and then only for data specific to the intervening period in question and not previously collected:

(a) For Benefited Businesses as described in OAR 123-070-1150(1) (lottery-funded programs), the data may be collected for the following quarters: January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31.

(b) For Benefited Businesses as described in OAR 123-070-1150(2) (tax incentive programs), the data may be collected on an annual basis, subject to modification under section (3) of this rule, for each calendar year until the end of the property tax exemption period.

(3) If a Benefited Business is receiving benefits under a program pursuant to both subsections (2)(a) and (b) of this rule, the data for the

Benefited Business may be collected in the manner specified in subsection (2)(a) of this rule during the period in which the First Source Agreement is in effect for the lottery-funded benefits, with an annual compilation for every December 31. After such period, data collection may take place only as indicated in subsection (2)(b) of this rule.

(4) For Benefited Businesses as described in OAR 123-070-1150(2), the county under ORS 285C.609 or the enterprise zone sponsor may seek the Contact Agency's assistance as described in subsection (5) of this rule for the following:

(a) A Strategic Investment Program agreement under ORS 285C.609;

(b) An urban enterprise zone in which the sponsor has adopted a policy under ORS 285C.150 (irrespective of a regularly formatted First Source Agreement as provided in OAR 123-070-1800);

(c) Resolution adopted under ORS 285C.155 to waive employment increase requirement; or

(d) A written agreement for an extended period of enterprise zone abatement up to five years under ORS 285C.160.

(5) For the purposes of section (4) of this rule and this section, the zone sponsor or the county:

(a) Shall take appropriate and necessary actions to compensate the Contact Agency or Providers for any expenses that arise, and to safeguard the confidentiality of data submitted or compiled with respect to legal constraints affecting the Contact Agency or any Provider;

(b) May make the Benefited Business's submission of data specified in paragraph (c)(A) of this section a condition for the tax incentive benefit, if so provided in the policy or agreements under section (4) of this rule; and

(c) May in cooperation with the Contact Agency request the following:

(A) That the First Source Agreement specify particular types and formats of data that the Benefited Business must provide, either to demonstrate compliance with requirements under ORS 285C.150, 285C.155, 285C.160, 285C.205 or 285C.609(5) or to satisfy other information needs of the sponsor or the county related to the Benefited Business's hiring, employment, training, compensation and so forth, insofar as it is practical, and as such data or information reasonably relates to the First Source Agreement; and

(B) To have such data transmitted through the Contact Agency. (No such data is to come from any other information source to which a Provider has access, including but not limited to unemployment insurance data)

(6) For Benefited Businesses under the state lottery-funded programs listed in OAR 123-070-1150(1), the Contact Agency may provide appropriate compilations of data collected under this rule to the Department, as requested by the Director.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.060, 285C.105, 285C.150, 285C.155, 285C.160, 285C.606, 285C.609 & 461.740
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 3-1992(Temp), f. 3-12-92, cert. ef. 3-13-92; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 9-1996, f. 10-8-96, cert. ef. 10-11-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0360; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-2000

Enterprise Zone — Specific Rules

OAR 123-070-2000 to 123-070-2999 relate to matters of First Source Agreements only for Benefited Businesses that will be or are receiving a three- to five-year exemption from ad valorem taxes on qualified property in an enterprise zone under ORS 285C.050 to 285C.250, such that OAR 123-070-2000 to 123-070-2999 do not pertain to a Benefited Business that is benefiting only from a lottery-funded program or the Strategic Investment Program. Nevertheless, provisions that relate exclusively to Benefited Businesses qualifying for an enterprise zone exemption are found elsewhere in this division of administrative rules.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.060, 285C.175 & 285C.215
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-2100

Enterprise Zone: First Source Coverage of Employees

For purpose of a Benefited Business that is authorized or qualified for an enterprise zone exemption on qualified property:

(1) The First Source Agreement shall apply to all of the Benefited Business's sites of operation within the enterprise zone but only for that zone.

(2) Unless the Contact Agency and the Benefited Business agree otherwise, "job openings," for purposes of OAR 123-070-1100(4) and 123-070-1700(1), exclude positions and persons that are not recognized under ORS 285C.050 and 285C.200, namely, employees who are temporary, seasonal, part-time (32 hours or less per week) or working at ineligible operations.

ADMINISTRATIVE RULES

(3) Whenever the Benefited Business intends to fill a job opening with someone, who, in a voluntary, temporary, part-time or other capacity, has been working at the business or job site for at least 30 days prior to the closure date of the job opening, the Benefited Business must indicate this situation and include the name of the prospective hire in its notification to the Contact Agency as described in OAR 123-070-1700(1)(c). On receiving such notification from a Benefited Business, the Contact Agency is in no way obligated to still perform any duty as described in OAR 123-070-1700(1)(d), but the Benefited Business is not excused from OAR 123-070-1700(1)(e) or any other requirement.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.215(3)
Stats. Implemented: ORS 285C.050, 285C.060, 285C.200 & 285C.215
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-2200

Enterprise Zone: Initial First Source Procedures

For purposes of qualifying for an enterprise zone tax exemption:

(1) An "eligible business firm" as defined in ORS 285C.050(6) shall enter into a First Source Agreement as described in OAR 123-070-1700 either:

(a) After the local zone manager approves the application for authorization of the eligible business firm;

(b) Before hiring new employees to qualify under ORS 285C.200; or

(c) Both as possible.

(2) Consistent with OAR 123-065-4328(4)(d) and 123-065-4345(1)(d), the local zone manager shall:

(a) Advise the eligible business firm/Benefited Business under section (1) of this rule to immediately seek a First Source Agreement;

(b) Notify the relevant Contact Person about the Benefited Business's application for authorization and about how to contact the Benefited Business; and

(c) Send the Contact Person the appropriate colored copy from the completed authorization approval form.

(3) After being informed by a local zone manager of an authorization/application pursuant to section (2) of this rule, the Contact Agency shall contact the Benefited Business and arrange an opportunity to enter into a First Source Agreement. A Benefited Business shall not be deterred from initiating such contact or from pursuing a prompt First Source Agreement.

(4) The Contact Agency shall provide a copy of the First Source Agreement to the respective local zone manager within ten business days of entering into a First Source Agreement with the authorized Benefited Business, or shall notify the local zone manager of any problems that arise in association with such a Benefited Business's entering into a First Source Agreement.

(5) The local zone manager shall use the information under section (4) of this rule to do the following:

(a) See that each authorized business firm enters into a timely, valid and accurate First Source Agreement, in accordance with this division of administrative rules;

(b) Inform the county assessor of a business firm that may have failed to enter into First Source Agreement under ORS 285C.215(2)(a); and

(c) Check that a proper and up-to-date First Source Agreement conforming to OAR 123-070-1700 is being used for Benefited Businesses in the zone, such that the local zone manager shall inform the Contact Agency and the Department of any needed corrections or revisions to a locally developed First Source Agreement.

(6) The local zone manager shall assist in advising and explaining to Benefited Businesses about their obligations under the First Source Agreement, including but not limited to requests by the Contact Agency or a Provider.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.215(3)
Stats. Implemented: ORS 285C.050, 285C.060, 285C.200 & 285C.215
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 22-1990(Temp), f. & cert. ef. 8-9-90; EDD 3-1992(Temp), f. 3-12-92, cert. ef. 3-13-92; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0370; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-2300

Enterprise Zone: Handling Exemption Claims

For purposes of the county assessor's processing of a Benefited Business's enterprise zone exemption claim with property schedule under ORS 285C.220 and 285C.225, except in the case of an existing waiver as described in OAR 123-070-1500(1)(a):

(1) The Benefited Business may attach a copy of the First Source Agreement to the claim form.

(2) For purposes of ORS 285C.175(1)(c), the assessor shall primarily rely on the zone sponsor, Contact Agency or other Provider informing the

assessor's office under ORS 285C.215(2) that a requisite First Source Agreement is lacking, for purposes of checking that the Benefited Business has entered into a current First Source Agreement consistent with this division of administrative rules.

(3) If wishing, for whatever reason, to independently verify the requisite existence, effectiveness or general suitability of the First Source Agreement, the assessor may do the following:

(a) Request and receive a copy of the First Source Agreement and related input directly from the local zone manager, the Contact Agency, the Benefited Business or any other entity, regardless of what is said elsewhere in this division or division 065 of these administrative rules; or

(b) Seek and rely on assistance under ORS 285C.230(1)(b) from the local zone manager before approving the exemption claim, for which inability or unwillingness on the part of the zone sponsor to provide such assistance may result in termination of the zone.

(4) If learning of a problem with the Benefited Business's execution of a suitable First Source Agreement by whatever means, then pending a corrective waiver as described in OAR 123-070-1500(1) or 123-070-2400, the county assessor:

(a) May deny the exemption claim, if the First Source Agreement was not executed as described in OAR 123-070-2200(1).

(b) Shall deny the exemption claim, if the First Source Agreement:

(A) Was not executed on or before December 31 directly preceding the first exemption year under ORS 285C.175;

(B) Does not cover at least all years of exemption; or

(C) Is not signed, violates this division of administrative rule or is contractually deficient.

(5) The assessor shall deny the exemption under ORS 285C.175(6), if by August 31 of the first tax year of exemption, a problem as described in subsection (4)(b) of this rule is not resolved through copies/documentation of the following:

(a) A (revised/replacement) First Source Agreement;

(b) Applicable waiver as described in OAR 123-065-1500 or 123-065-2400; or

(c) Both, as necessary.

(6) Once a Benefited Business is qualified and approved to receive the exemption, the exemption may not later be revoked or disqualified for lack of compliance with this division of administrative rules, except for the case of fraudulent representations by the Benefited Business or an agent thereof.

(7) Subject to requisite resolution of the outstanding problem, a denial as described in section (5) of this rule may be reversed and the exemption granted, as otherwise allowed under the laws and rules governing the procedures and authority of the assessor.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.215(3)
Stats. Implemented: ORS 285C.060, 285C.105, 285C.175, 285C.215, 285C.220, 285C.240
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-2400

Enterprise Zone: Allowing Late Execution of Agreement

(1) The Director may issue a waiver that excuses the requirement of entering into a First Source Agreement up until the time when it is actually executed or takes effect, such that it is not required to have been entered into:

(a) At the time of applicable hiring regardless of OAR 123-070-1600(1) or 123-070-2200(1)(b); or

(b) On or before December 31 of the year when qualified property is placed in service, directly before the first exemption year, as otherwise required under ORS 285C.215(1).

(2) A waiver as described in section (1) of this rule may be issued for the following reasons:

(a) The Benefited Business began or was using the first-source services of the Contact Agency or other Providers in a timely fashion, without having a formal First Source Agreement;

(b) Mistaken communications, an absence of local contacts or other similar situations hampered the ability or understanding of the Benefited Business regarding the First Source Agreement or the need to enter into it;

(c) The Benefited Business made a good faith effort to obtain a First Source Agreement, but it was misled or otherwise unable to readily obtain a First Source Agreement through no fault of its own; or

(d) Other comparable circumstances, including but not limited to what is described in OAR 123-065-1500(2).

(3) A Benefited Business, or the local zone manager, county assessor or Contact Agency on behalf of the Benefited Business, may seek a waiver under this rule by contacting Department staff at any time following

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approval of the application for authorization, whether before or after an action by the county assessor as described in OAR 123-070-2300.

(4) A waiver under this rule shall take the form of a written recommendation from Department staff to the Director that is approved by signature of the Director. The written recommendation shall describe:

- (a) The justification for the waiver pursuant to this rule;
- (b) The basis or source of evidence for such justification or determinations, including but not limited to verbal communications with the Contact Agency, the county assessor or other local parties;
- (c) The status of the Benefiting Business's entering into a First Source Agreement; and

(d) The date by which the First Source Agreement must be in effect.

(5) The Department shall provide notice of the Director's decision and distribute copies of any approved waiver, as well as any waiver as described in OAR 123-070-1500 affecting an enterprise zone exemption, to the:

- (a) Benefited Business;
- (b) County assessor;
- (c) Contact Agency;
- (d) Local zone manager; and
- (e) Department of Revenue (Attention: Exemptions Specialist, Property Tax Division).

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.215(3)
Stats. Implemented: ORS 285C.050, 285C.060, 285C.200 & 285C.215
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05

Oregon Public Employees Retirement System Chapter 459

Adm. Order No.: PERS 5-2005

Filed with Sec. of State: 2-22-2005

Certified to be Effective: 2-22-05

Notice Publication Date: 9-1-04

Rules Adopted: 459-010-0003

Subject: This rule is needed to clarify how a public employee becomes eligible for PERS Chapter 238 membership.

Rules Coordinator: David K. Martin—(503) 603-7713

459-010-0003

Eligibility and Membership for the PERS Chapter 238 Program

(1) For the purpose of this rule:

(a) "Concurrent positions" means positions with two or more PERS participating employers where the positions occur together in any given calendar month.

(b) "Qualifying position" means a position or concurrent positions in which an employee is expected to perform 600 or more hours of service in a calendar year.

(A) For purposes of initially determining qualification for membership, but not for any other purpose, if an employee was employed in a position or concurrent positions for less than a full calendar year and performed less than 600 hours of service in that calendar year, but would have performed 600 hours of service or more if the employee had performed service in the same position or concurrent positions for the full calendar year, and if the employee performs 600 or more hours of service in the following calendar year, the position or concurrent positions will be considered qualifying as of the initial date of employment.

(B) For purposes of determining qualification upon separation from employment, but not for any other purpose, if an employee was employed in a position or concurrent positions for less than a full calendar year and performed less than 600 hours of service in that calendar year, but would have performed 600 hours of service or more if the employee had performed service in the same position or concurrent positions for the full calendar year, and if the employee performed 600 or more hours of service in the previous calendar year, the position or concurrent positions will be considered qualifying up to the date of separation.

(C) If an employee is employed in a position or in concurrent positions designated as non-qualifying and performs 600 or more total hours of service in a calendar year, the position or concurrent positions will be considered qualifying and the employee shall be considered to have performed service in a qualifying position from the date of employment or January 1 of the calendar year in which the employee performed more than 600 hours of service, whichever is later.

(D) Except as provided in paragraph (A) and (B) of this subsection, if an employee is employed in a position or concurrent positions designated as qualifying and performs less than 600 hours of service in a calendar year,

the position or concurrent positions will be considered non-qualifying from the date of employment or January 1 of the calendar year in which the employee performed less than 600 hours of service, whichever is later.

(c) "Non-qualifying position" means:

(A) Any position that does not conform to the requirements set forth in subsection (b) of this section;

(B) Positions with two or more PERS participating employers in which there is an employee/employer relationship, as defined in OAR 459-010-0030, that do not meet the definition of "concurrent positions" even though each position, when added together, may total 600 or more hours of service in a calendar year.

(d) "Service" means any calendar month an employee:

(A) Is in an employer/employee relationship, as defined in OAR 459-010-0030; and

(B) Received a payment of "salary," as defined in ORS 238.005(20) or similar payment from workers compensation or disability.

(2) An employee qualifies as a member of PERS under ORS 238.015 if the employee:

(a) Has completed a 6 month waiting period as defined in ORS 238.015(1);

(b) Has been employed in a qualifying position;

(c) Is not otherwise ineligible for membership; and

(d) Has not elected to participate in an optional or alternate retirement plan as provided in ORS Chapters 243 and 353.

(3) An employee shall remain an active member in PERS if the employee is employed in a qualifying position that totals 600 or more hours of service per calendar year.

(4) If an employee hired into a non-qualifying position completed service meeting the definition of "qualifying position" under section (1)(b) of this rule, the employee shall qualify as an active member for that calendar year.

(5)(a) If an active member in a qualifying position is terminated or they separate from employment prior to completing 600 hours of service in a year, the member shall not receive any service credit for that year unless they qualify under section (1)(b)(B) above.

(b) If an active member in a qualifying position is terminated or they separate from employment prior to completing 600 hours of service in a year and do not qualify under section (1)(b)(B), in addition to not receiving any service credit, all contributions for the year, employee and employer, shall be credited to the employer.

(6) The provisions of this rule are effective on January 1, 2005.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015, 243.800 and 353.250

Hist.: PERS 5-2005, f. & cert. ef. 2-22-05

Adm. Order No.: PERS 6-2005

Filed with Sec. of State: 2-22-2005

Certified to be Effective: 2-22-05

Notice Publication Date: 12-1-04

Rules Adopted: 459-010-0014

Subject: PERS members receive "creditable service" for "full months and major fractions of a month" under the definition at ORS 238.005(5). While the need to serve 600 hours in a year as a requirement for membership is well recognized (see ORS 238.015(4)), reducing that standard to a month-to-month crediting of service has varied over time with agency administration. This rule articulates the standards by which creditable service would be granted to members in the PERS Chapter 238 Plan.

Rules Coordinator: David K. Martin—(503) 603-7713

459-010-0014

Creditable Service in PERS Chapter 238 Program

(1) For purposes of this rule:

(a) "Service credit" has the same meaning as "creditable service" in ORS 238.005(5).

(b) "Major fraction of a month" means a minimum of 50 hours in any calendar month in which an active member is being paid a salary by a participating public employer and contributions are due to the system either by or on behalf of the member.

(2) An active member, as defined in ORS 238.005(12)(b), shall accrue one full month of service credit if the employee:

(a) Is employed in a qualifying position as defined in OAR Chapter 459; and

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(b) Works a major fraction of a calendar month.(3) If the active member is a school employee, they may instead accrue one half year of service credit if the employee:

(a) Is or was employed in a qualifying position as defined in OAR Chapter 459; and

(b) Is employed for all portions of a school year when it is normally in session.

(4) Except as provided for under section (3) of this rule, an employee may not accrue more than one full month of service credit for any number of hours worked in a calendar month and no more than one year of service credit for any number of hours worked in a calendar year.

(5) The provisions of this rule are effective on January 1, 2005.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015

Hist.: PERS 6-2005, f. & cert. ef. 2-22-05

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Adm. Order No.: PERS 7-2005(Temp)

Filed with Sec. of State: 2-22-2005

Certified to be Effective: 2-22-05 thru 8-15-05

Notice Publication Date:

Rules Amended: 459-070-0001

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

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

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

The PERS Chapter 238 Program provision prevents the negative impact that would occur on members who leave the system early in the year, providing for continuing service if they were in a qualifying position the previous year. Unless the two sets of rules are consistent, PERS Chapter 238 Program members who separate from employment early in the year before performing 600 hours of service would receive service credit but not IAP contributions. This inconsistency cannot reasonably be administered or tracked under the current programming and is resulting in delays in distributing IAP funds and calculating PERS Chapter 238 Program retirements.

Rules Coordinator: David K. Martin—(503) 603-7713

459-070-0001

Definitions

The words and phrases used in this Division have the same meaning given them in ORS 238A.005 unless otherwise indicated in this rule. Specific and additional terms for purposes of Divisions 70, 75 and 80 are defined as follows unless context requires otherwise:

(1) "Break in service" means a period concluding on or after August 29, 2003, during which a member of PERS performs no service, as defined below, with a participating public employer in a qualifying position for a duration of:

(a) Six or more consecutive calendar months; or

(b) 12 or more consecutive calendar months under one of the following circumstances:

(A) The member of PERS ceases performance of service for purposes that have qualified the member for family leave, as described in ORS 238A.025(3)(c), as determined by the employer; or

(B) The member of PERS ceases performance of service for career development purposes, as described in ORS 238A.025(3)(d).

(2) "Calendar month" means a full month beginning on the first calendar day of a month and ending on the last calendar day of the same month.

(3) "Calendar year" means 12 calendar months beginning on January 1 and ending on December 31 following.

(4) "Employee" has the same meaning as "eligible employee" in ORS 238A.005(4).

(5) "Employee class" means a group of similarly situated employees whose positions have been designated by their employer in a policy or collective bargaining agreement as having common characteristics.

(6) "Employee contributions" means contributions made to the individual account program by an eligible employee under ORS 238A.330, or on behalf of the employee under ORS 238A.335.

(7) "Member" has the same meaning given the term in ORS 238A.005(10).

(8) "Member account" means the account of a member of the individual account program.

(9) "Member of PERS" has the same meaning as "member" in ORS 238.005(12)(a), but does not include retired members.

(10) "OPSRP" means the Oregon Public Service Retirement Plan.

(11) "Overtime" means the salary or hours, as applicable, that an employer has designated as overtime.

(12) "PERS" means the retirement system established under ORS chapter 238.

(13)(a) "Qualifying position" means a position or positions in which an employee is expected to perform 600 or more combined hours of service in a calendar year.

(b) If an employee is employed in a position or positions not designated as qualifying and performs 600 or more total hours of service in a calendar year, the position or positions will be considered qualifying and the employee shall be considered to have performed service in a qualifying position from the date of employment or January 1 of the calendar year in which the employee performed more than 600 hours of service, whichever is later.

(c) Except as provided in subsection (d) of this section, if an employee is employed in a position or positions designated as qualifying and performs less than 600 hours of service in a calendar year, the position will be considered non-qualifying from the date of employment or January 1 of the calendar year in which the employee performed less than 600 hours of service, whichever is later.

(d) For purposes of determining qualification upon initial employment in a position or positions, but not for determining a break in service or any other purpose, if an employee is employed in a position or positions for less than a full calendar year and performs less than 600 hours of service in that calendar year, but would have performed 600 hours of service or more if the employee had performed service in the same position(s) for the full calendar year, and if the employee performs 600 or more hours of service in the following calendar year, the position or positions will be considered qualifying as of the date of employment.

(e) For purposes of determining qualification upon separation from employment in a position or positions, but not for any other purpose, if an employee was employed in a position or positions for less than a full calendar year and performed less than 600 hours of service in that calendar year, but would have performed 600 hours of service or more if the employee had performed service in the same position or positions for the full calendar year, and if the employee performed 600 or more hours of service in the previous calendar year, the position or positions will be considered qualifying as of the date of separation.

(14)(a) "Salary" has the same meaning given the term in ORS 238A.005(16).

(b) Salary is considered earned when paid except as provided in subsection (c) of this section and as otherwise provided in ORS 238A.005(16)(b)(E).

(c) Salary is considered earned when earned for purposes of calculating final average salary.

(15) "School employee" has the meaning given the term in ORS 238A.140(6).

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(16) "Service." Except as provided in subsection (c) of this section, a person is still providing "service," for purposes of determining whether a "break in service" has occurred under Section 2a, Chapter 733, Oregon laws 2003 (Enrolled HB 2020), during any calendar month that a member:

(a) Is in an employer/employee relationship; and

(b) Receives a payment of "salary," as that term is defined in ORS 238.005(20) or similar payment from workers compensation or disability.

(c) A member who is a school employee will be considered to provide "service" during any calendar month the institution is not normally in session so long as the member is in an employer/employee relationship both before and after the period the institution is not normally in session.

(17) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: 238A.450

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

Hist.: PERS 4-2004, f. & cert. ef. 2-18-04; PERS 7-2005(Temp), f. & cert. ef. 2-22-05 thru 8-15-05

Adm. Order No.: PERS 8-2005

Filed with Sec. of State: 2-22-2005

Certified to be Effective: 2-22-05

Notice Publication Date: 1-1-05

Rules Amended: 459-005-0506, 459-005-0525, 459-005-0535, 459-005-0545, 459-005-0560, 459-005-0590, 459-005-0591, 459-005-0595

Rules Repealed: 459-005-0506(T), 459-005-0525(T), 459-005-0535(T), 459-005-0545(T), 459-005-0560(T), 459-005-0590(T), 459-005-0591(T), 459-005-0595(T)

Subject: The proposed rule modifications affect a series of rules in the OAR Chapter 459, Division 005, relating to the administration of the PERS Plan. Generally, the modifications are to apply the IRS limitations to the new OPSRP programs from ORS Chapter 238A and update provisions that have been affected by federal law and rule changes. The rules to be modified are summarized briefly below with explanations for the modifications to each rule affected:

OAR 459-005-0506: Updates statutory references to include the OPSRP programs and other changes. Adds clarifying language regarding federal tax treatment of the PERS Plan components as defined contribution or defined benefit plans.

OAR 459-005-0525: Updates statutory references to include OPSRP programs and terminology.

OAR 459-005-0535: Incorporates OPSRP statutory references and terminology. Changes the mortality table used for calculating benefit limitations to the table prescribed by the Internal Revenue Code.

OAR 459-005-0545: Refers to the Internal Revenue Code section method to adjust the annual limitation so it will increase consistently with the IRS' requirements. Otherwise, changes are to incorporate OPSRP references as needed.

OAR 459-005-0560: Updates references to IRS regulations that became final this past summer. Modifications specify limitations and choices dictated by IRS rules. IRS regulations used to prevent a member in RMD from "popping up" to Option 1; the new regulations allow that change, so the rule is changed accordingly.

OAR 459-005-0590: Incorporates OPSRP statutory references.

OAR 459-005-0591: Adds a provision that the rollover must be to a defined contribution plan that accepts the distribution.

OAR 459-005-0595: Adds language to clarify rollover eligibility for a PERS Plan distribution that is based in part on after-tax employee contributions includable in the member's gross income.

Rules Coordinator: David K. Martin—(503) 603-7713

459-005-0506

Plan Compliance with Federal Statutes and Regulations

(1) The purpose of administrative rules OAR 459-005-0500 to 459-005-0799 is to assure compliance with applicable federal statutes and regulations for governmental retirement plans qualified under the Internal Revenue Code (IRC) Section 401(a), and to implement ORS Chapters 238 and 238A by establishing limits on contributions and benefits under the Public Employees Retirement System (PERS).

(2) Definitions in general for OAR 459-005-0500 to 459-005-0799:

(a) "Member" shall have the same meaning as provided in ORS 238.005(12) with respect to members covered by ORS Chapter 238 and as

provided in ORS 238A.005(10) with respect to members covered by ORS Chapter 238A.

(b) "Employment" means service as an employee as defined in OAR 459-005-0001(13).

(c) "Board" shall have the same meaning as provided in ORS 238.005(2).

(d) "PERS" shall have the same meaning as provided in OAR 459-005-0001(23).

(e) "Defined contribution plan (DC)" means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account. For purposes of IRC Section 414(k), the individual account program under ORS Chapter 238A shall be treated as a DC plan for the purposes of IRC Sections 72(d) and 415.

(f) "Defined benefit plan (DB)" means a plan which is not a defined contribution plan. For purposes of IRC Section 414(k), the pension programs under ORS Chapters 238A and 238 shall be treated as part of a defined benefit plan for purposes of IRC Sections 72(d) and 415.

(3) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.630(3)(h), 238.305 & 238.650

Stats. Implemented: ORS 238

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05

459-005-0525

Ceiling on Compensation for Purposes of Contributions and Benefits

(1) The purpose of this rule is to assure compliance of the Public Employees Retirement System (PERS) with Internal Revenue Code (IRC) Section 401(a)(17) relating to the limitation on annual compensation allowable for determining contribution and benefits under ORS Chapters 238 and 238A.

(2) Definitions:

(a) A "participant" shall mean an active or inactive member of PERS.

(b) An "eligible participant" shall mean a person who first becomes a member of PERS before January 1, 1996.

(c) A "noneligible participant" shall mean a person who first becomes a member of PERS after December 31, 1995.

(d) "Annual compensation" shall mean "salary," as defined in ORS 238.005(20) and 238.205 with respect to ORS Chapter 238 and in ORS 238A.005(16) with respect to Chapter 238A paid to the member during a calendar year or other 12-month period, as specified in this rule.

(e) For the purposes of this rule as it applies to ORS Chapter 238, an "employer" shall mean a "public employer" as defined in ORS 238.005(17). For the purposes of this rule as it applies to ORS Chapter 238A, an "employer" shall mean a "participating public employer" as defined in ORS 238A.005(11).

(3) For eligible participants, the limit set forth in IRC Section 401(a)(17) shall not apply for purposes of determining the amount of employee or employer contributions that may be paid into PERS, and for purposes of determining benefits due under ORS Chapters 238 and 238A. The limit on annual compensation for eligible participants shall be no less than the amount which was allowed to be taken into account for purposes of determining contributions or benefits under former ORS 237.001 to 237.315 as in effect on July 1, 1993.

(4) For noneligible participants, the annual compensation taken into account for purposes of determining contributions or benefits under ORS Chapters 238 and 238A shall be measured on a calendar year basis, and shall not exceed \$200,000 per calendar year beginning in 2002.

(a) The limitation on annual compensation will be indexed by cost-of-living adjustments in subsequent years as provided in IRC Section 401(a)(17)(B).

(b) A noneligible participant employed by two or more agencies or instrumentalities of a PERS participating employer in a calendar year, whether concurrently or consecutively, shall have all compensation paid by the employer combined for determining the allowable annual compensation under this rule.

(c) PERS participating employers shall monitor annual compensation and contributions to assure that reports and remitting are within the limits established by this rule and IRC Section 401(a)(17).

(5) For a noneligible participant, Final Average Salary under ORS 238.005(8) with respect to ORS Chapter 238 and under ORS 238A.130 with respect to ORS Chapter 238A shall be calculated based on the amount of compensation that is allowed to be taken into account under this rule.

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(6) Notwithstanding section (4) and (5) of this rule, if the Final Average Salary as defined in ORS 238.005(8) with respect to Chapter 238 and as defined in ORS 238A.130 with respect to Chapter 238A is used in computing a noneligible participant's retirement benefits, the annual compensation shall be based on compensation paid in a 12-month period beginning with the earliest calendar month used in determining the 36 months of salary paid. For each 12-month period, annual compensation shall not exceed the amount of compensation that is allowable under this rule for the calendar year in which the 12-month period begins.

(7) With respect to ORS Chapter 238, creditable service, as defined in ORS 238.005(5), shall be given for each month that an active member is paid salary or wages and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 410(a)(17). With respect to ORS Chapter 238A, retirement credit as determined in ORS 238A.140, shall be given for each month that an active member is paid salary or wages and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 401(a)(17).

(8) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.630, 238.650 & 238A.005(16)(i)

Stats. Implemented: ORS 238

Hist.: PERS 4-1995, f. 11-14-95, cert. ef. 12-1-95; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 11-2002, f. & cert. ef. 7-17-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05

459-005-0535

Annual Benefit Limitation

(1) Applicable Law. This administrative rule shall be construed consistently with the requirements of the Internal Revenue Code (IRC) Section 415(b) and the Treasury regulations and Internal Revenue Service rulings and other interpretation issued thereunder.

(2) Annual Benefit Limitation. The benefits payable to any member for a calendar year, when expressed as an annual benefit, shall not exceed the applicable dollar limitation for that year.

(3) Applicable Dollar Limitation. For purposes of this rule, the "applicable dollar limitation" for each calendar year is the limitation in effect under IRC Section 415(b)(1)(A), with the adjustment described as follows:

(a) Cost-of-Living Adjustments. The limitation under IRC Section 415(b)(1)(A) shall be adjusted for cost of living in accordance with IRC Section 415(d).

(b) Reduction for Retirement Before Age 62. Except as otherwise provided in the paragraphs (A), (B), and (C) of this subsection, if the member's benefit begins before the member reaches 62 years of age, the applicable dollar limitation shall be adjusted as provided for in IRC Section 415(b)(2)(C).

(A) This reduction shall not apply to any member who has at least 15 years of creditable service as a full-time employee of a police department or fire department which is organized and operated by the state or a political subdivision of the state to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the state or political subdivision.

(B) This reduction shall not apply to disability retirement allowances or death benefits.

(C) This reduction shall not apply to any portion of a member's annual benefit that is derived from contributions to purchase service credit, as defined in OAR 459-005-0540, Permissive Service Credit.

(c) Reduction for Less than 10 Years of Membership. Except as provided in paragraphs (A) and (B) of this subsection, if the member has less than 10 years of active membership in PERS, the applicable dollar limitation shall be reduced as provided for under IRC Section 415(b)(5)(A).

(A) For the purposes of this section, a member with less than one year of active membership shall be treated as having one year of active membership.

(B) The reduction under this section shall not apply to disability retirement allowances or death benefits.

(d) Increase for Retirement After Age 65. If the member's benefit begins after the member reaches 65 years of age, the applicable dollar limitation shall be increased as provided for under IRC Section 415(b)(2)(D).

(4) Annual Benefit. For purposes of this rule, the "annual benefit" is the benefit payable to a member under ORS Chapter 238 and the pension program under ORS Chapter 238A for a calendar year, excluding any benefit payable under ORS 238.485 through 238.492, and adjusted as described in this section.

(a) Excludable Benefits. The annual benefit shall not include the portion of the member's benefit that is attributable to:

(A) After-tax member contributions, other than member payments to purchase permissive service credit as defined in OAR 459-005-0540, Permissive Service Credit;

(B) Rollover contributions, if such contributions are permitted;

(C) A transfer of assets from another qualified retirement plan; and

(D) Purchases of permissive service credit, as defined in OAR 459-005-0540, Permissive Service Credit, if all of the member's payments to purchase permissive service credit are treated as annual additions for purposes of OAR 459-005-0545, Annual Addition Limitation, in the year purchased.

(b) Adjustment to Straight Life Annuity. The member's benefit shall be adjusted to an actuarially equivalent straight life annuity beginning at the same age. For purposes of this adjustment, the following values are not taken into account:

(A) The value of a qualified spouse joint and survivor annuity to the extent that the value exceeds the sum of the value of a straight life annuity beginning on the same day, and the value of any post-retirement death benefits that would be payable even if the annuity was not in the form of a joint survivor annuity.

(B) The value of benefits that are not directly related to retirement benefits, such as pre-retirement disability benefits and post-retirement medical benefits.

(C) The value of post-retirement cost of living increases, to the extent they do not exceed the increase provided under IRC Section 415(d) and Treasury Regulation Section 1.415-5.

(5) Interest Rates. The following interest rates shall apply for purposes of adjusting the applicable dollar limitation under section (3) of this rule and the annual benefit under section (4) of this rule.

(a) For purposes of reducing the applicable dollar limitation for retirement before 62 years of age under subsection (3)(b) of this rule, the interest rate shall be the greater of five percent or PERS' assumed earnings rate.

(b) For purposes of determining the portion of a member's benefits attributable to after-tax member contributions under paragraph (4)(a)(A) of this rule, the interest rate shall be the greater of 5 percent or the PERS' assumed earnings rate.

(c) For purposes of adjusting the member's annual benefits under section (4) of this rule (other than the adjustment for after-tax member contributions), the interest rate shall be the greater of five percent or PERS' assumed earnings rate.

(d) For purposes of increasing the applicable dollar limitation for retirement after 65 years of age under subsection (3)(d) of this rule, the interest rate shall be the lesser of five percent or PERS' assumed earnings rate.

(6) Mortality Table. For purposes of adjusting the applicable dollar limitation and annual benefit under sections (3) and (4) of this rule, the mortality table used shall be the table prescribed pursuant to the Internal Revenue Code.

(7) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.630, 238.650 & 238A.125

Stats. Implemented: ORS 238.005-238.715

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 3-2000, f. & cert. ef. 3-10-00; PERS 11-2002, f. & cert. ef. 7-17-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05

459-005-0545

Annual Addition Limitation

(1) Applicable Law. This administrative rule shall be construed consistently with the requirements of the Internal Revenue Code (IRC) Section 415(c) and the Treasury regulations and Internal Revenue Service rulings and other interpretations issued thereunder.

(2) Annual Addition Limitation. Except as otherwise provided in this rule, no member's annual additions to PERS for any calendar year (after 2001) shall exceed the lesser of the following amounts:

(a) \$40,000 (as adjusted under IRC Section 415(d)); or

(b) One hundred percent of the member's compensation for the calendar year (as defined in IRC Section 415(c)(3)).

(3) Annual Additions. For purposes of this rule, the term "annual additions" has the same meaning as under IRC Section 415(c)(2).

(4) Permissive Service Credit. The following special rules shall apply with respect to purchases of permissive service credit, as defined in OAR 459-005-0540, Permissive Service Credit:

(a) If a member's after-tax contributions to purchase permissive service credit are included in the member's annual additions under section (3) of this rule, the member shall not be treated as exceeding the 100 percent of compensation limitation under subsection (2)(b) of this rule solely because of the inclusion of such contributions.

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(b) With respect to any eligible participant, the annual addition limitation in section (2) of this rule shall not be applied to reduce the amount of permissive service credit to an amount less than the amount that could be purchased under the terms of the plan as in effect on August 5, 1997. As used in this subsection, the term "eligible participant" includes any individual who became an active member before January 1, 2000.

(5) Purchase of Service in the Armed Forces Under ORS 238.156 or 238A.150. If a member makes a payment to PERS to purchase retirement credit for service in the Armed Forces pursuant to ORS 238.156(3)(c) or 238A.150 and the service is covered under Internal Revenue Code Section 414(u), the following special rules shall apply for purposes of applying the annual addition limitation in section (2) of this rule:

(a) The payment shall be treated as an annual addition for the calendar year to which it relates;

(b) The payment shall not be treated as an annual addition for the calendar year in which it is made; and

(c) The member shall be treated as having received the following amount of compensation for the period of service in the Armed Forces to which the payment relates:

(A) The amount of compensation the member would have received from a participating employer had the member not been in the Armed Forces; or

(B) If the amount in paragraph (A) of this subsection is not reasonably certain, the member's average compensation from the participating employer during the 12-month period immediately preceding the period of service in the Armed Forces (or, if shorter, the period of employment immediately preceding the period of service in the Armed Forces).

(6) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.630, 238.650 and 238A.370

Stats. Implemented: ORS 238.005-238.715

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 11-2002, f. & cert. ef. 7-17-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05

459-005-0560

Required Minimum Distributions, Generally

(1) Applicable Law. Distributions under the Public Employees Retirement System (PERS) shall be made in accordance with Internal Revenue Code (IRC) Section 401(a)(9), including IRC Section 401(a)(9)(G), and the Treasury regulations and Internal Revenue Service rulings and other interpretations issued thereunder, including Treasury Regulation Sections 1.401(a)(9)-1 through 1.401(a)(9)-9. The provisions of this administrative rule and any other statute or administrative rule reflecting the required minimum distribution requirements of IRC Section 401(a)(9) shall override any distribution options that are inconsistent with IRC Section 401(a)(9).

(2) Distributions to Members. Each member's entire benefit under PERS shall be distributed to the member, beginning no later than the required beginning date, over the member's lifetime (or the joint lives of the member and a designated beneficiary), or over a period not extending beyond the member's life expectancy (or the joint life expectancies of the member and a designated beneficiary).

(a) Required Beginning Date. For purposes of this section, the "required beginning date" is April 1 of the calendar year after the later of the following:

(A) The calendar year in which the member reaches age 70 $\frac{1}{2}$; or

(B) The calendar year in which the member retires.

(b) Designated Beneficiary. For purposes of this section, a "designated beneficiary" means any individual designated as a beneficiary by the member. If the member designates a trust as a beneficiary, the individual beneficiaries of the trust shall be treated as designated beneficiaries if the trust satisfies the requirement set forth in Treasury Regulation Section 1.401(a)(9)-4.

(c) Calculation of Life Expectancies. For purposes of this section and Chapter 238 benefits and the Pension Program, which are part of the DB component of PERS, life expectancies shall not be recalculated after the initial determination, unless otherwise required by Treasury Regulation Section 1.401(a)(9)-5, Q&A-4 and Q&A-5. For purposes of this section and the Individual Account Program, life expectancies shall be recalculated but no more frequently than annually, unless otherwise required by Treasury Regulation Section 1.401(a)(9)-5, Q&A-5.

(d) Limitations on Benefit Changes. A retired member who has had a required beginning date shall not change a beneficiary designation, benefit option election, or any other designation or election except as permitted under Treasury Regulation Sections 1.401(a)(9)-4 and 1.401(a)(9)-6.

(e) Limitations on Conversion of Joint Annuity to Single Life Annuity Following Divorce. A retired member who has had a required beginning

date may elect to convert a joint and survivor annuity under Option 2A or 3A under Chapter 238 to a single life annuity by reason of the member's divorce from the joint annuitant, subject to the provisions of Treasury Regulation Section 1.401(a)(9)-6. This section applies to ORS Chapter 238 benefits notwithstanding ORS 238.305(5) and 238.325(3).

(f) Limitations on Survivor Annuity Elections. Except as otherwise required by a domestic relation order under ORS 238.465, if a member elects a 100 percent (100%) joint and survivor annuity (Option 2 or 2A under ORS 238.305(1) and under 238A.190(1)(a) and designates a non-spouse beneficiary who is more than ten years younger than the member as calculated under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2, the benefit shall be actuarially adjusted to provide for a reduced survivor annuity benefit to the extent necessary to comply with federal requirements for qualified retirement plans.

(g) Limitation on Period-Certain Annuity Election (Chapter 238 only). If a member elects a 15-year certain option (Option 4 under ORS 238.305(1)), and attains age 85 or older during the calendar year in which the benefits commence, the benefit shall be actuarially adjusted to provide for a shorter payout period to the extent necessary to comply with federal requirement for qualified retirement plans.

(h) Limitation on Selection of IAP Benefit Options. Benefit payment options selected under the Individual Account Program shall be considered as payment options under a DC plan and must comply with the requirements of Treasury Regulation Section 1.401(a)(9)-5.

(3) Distributions to Beneficiaries of Retired Members. If a retired member dies after annuity benefits payments have begun under Chapter 238 or the Pension Program or other benefit payments are required to begin under section (2) or this rule, any death benefits shall be distributed at least as rapidly as under the distribution method being used at the member's death.

(4) Distributions to Beneficiaries of Active and Inactive Members. If an active or inactive member dies before annuity payments have begun under Chapter 238 or the Pension Program or other benefit payments are required to begin under section (2) of this rule, any death benefits shall be distributed by December 31 of the calendar year that contains the fifth anniversary of the member's death, except as provided in the following:

(a) Distributions to Designated Beneficiaries. The five-year rule shall not apply to any death benefit that is payable to a member's designated beneficiary, if:

(A) The benefit is distributed over the designated beneficiary's lifetime or over a period not extending beyond the designate beneficiary's life expectancy; and

(B) The distributions begin no later than December 31 of the calendar year that contains the first anniversary of the member's death.

(b) Distributions to Spouse Designated Beneficiaries. Notwithstanding subsection (a) of this section, if the designated beneficiary is the member's surviving spouse as defined by the Internal Revenue Code:

(A) The commencement of distributions under subsection (a)(B) of this section may be delayed until December 31 of the calendar year in which the member would have reached age 70 $\frac{1}{2}$; and

(B) If the surviving spouse dies after the member's death but before the distributions to the spouse have begun, the rules of this section shall apply to any death benefit payable to any contingent beneficiary as if the spouse were the member. Notwithstanding the foregoing, however, this subsection shall not apply to any death benefit payable to a surviving spouse of the deceased member's surviving spouse.

(5) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.630, 238.650, 238A.130, 238A.170 & 238A.410

Stats. Implemented: ORS 238.005-238.715

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05

459-005-0590

General Provisions and Applicability Date — Direct Rollovers

(1) OAR 459-005-0590 to 459-005-0599 apply to direct rollover distributions made on or after January 1, 1993.

(2) Notwithstanding any provision to the contrary in ORS Chapters 238 or 238A or any administrative rule of the Public Employees Retirement Board other than OAR 459-005-0590 to 459-005-0599, a distributee may elect, in accordance with OAR 459-005-0599, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(3) The direct rollover rule OAR 459-005-0590 to 459-005-0599 shall be interpreted and administered in accordance with Code Section 401(a)(31) and any applicable regulations and administrative rulings thereunder.

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(4) The provisions of this rule are effective on January 1, 2004.
Stat. Auth.: ORS 238.650 & 238A.430
Stats. Implemented: ORS 238.005-238.715
Hist.: PERS 11-1998, f. & cert. ef. 12-17-98; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05

459-005-0591

Definitions — Direct Rollovers

As used in OAR 459-005-0590 to 459-005-0599 the following words and phrases shall have the following meanings:

- (1) "Code" means the Internal Revenue Code of 1986, as amended.
- (2) A "direct rollover" means the payment of an eligible rollover distribution by PERS to an eligible retirement plan specified by the distributee.
- (3) A "distributee" includes a PERS member, the surviving spouse of a deceased PERS member, and the current or former spouse of a PERS member who is the alternate payee under a domestic relations order that satisfies the requirements of ORS 238.465 and the rules adopted thereunder.
- (4) An "eligible retirement plan" means any one of the following:
 - (a) An individual retirement account or annuity described in Code Section 408(a) or (b), but shall not include a Roth IRA as described in Code Section 408A;
 - (b) An annuity plan described in Code Section 403(a) that accepts the distributee's eligible rollover distribution;
 - (c) A qualified trust described in Code Section 401(a) that accepts the distributee's eligible rollover distribution;
 - (d) An eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A) and accepts the distributee's eligible rollover distribution.
 - (e) An annuity contract described in Code Section 403(b) that accepts the distributee's eligible rollover distribution.
 - (f) For the purposes of ORS 237.650(3), the individual employee account maintained for a member under the Individual Account Program as set forth under ORS 238A.350(2); and
 - (g) For the purposes of ORS 237.655(2), the state deferred compensation program.
- (5) An "eligible rollover distribution" means any distribution of all or any portion of a distributee's PERS benefit, except that an eligible rollover distribution shall not include:
 - (a) Any distribution that is one of a series of substantially equal periodic payment made no less frequently than annually for the life (or life expectancy) of the distributee or the joint lives (or life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;
 - (b) Any distribution to the extent that it is a required or minimum distribution under Code Section 401(a)(9).
- (6) A "recipient plan" means an eligible retirement plan that is designated by a distributee to receive a direct rollover.
- (7) The provisions of this rule are effective on January 1, 2004.
Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.005-238.715
Hist.: PERS 11-1998, f. & cert. ef. 12-17-98; PERS 1-2002(Temp), f. & cert. ef. 1-11-02 thru 6-28-02; PERS 3-2002, f. & cert. ef. 3-26-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 3-2005, f. & cert. ef. 1-31-05; PERS 8-2005, f. & cert. ef. 2-22-05

459-005-0595

Limitations — Direct Rollovers

Notwithstanding any provision to the contrary in OAR 459-005-0590 to 459-005-0599, a distributee's right to elect a direct rollover is subject to the following limitations:

- (1) A distributee may elect to have an eligible rollover distribution paid in a direct rollover to only one eligible retirement plan.
- (2) A distributee may elect a direct rollover only when his or her eligible rollover distribution(s) during a calendar year is reasonably expected to total \$200 or more.
- (3) A distributee may elect to have part of an eligible rollover distribution be paid directly to the distributee, and to have part of the distribution paid as a direct rollover only if the member elects to have at least \$500 transferred to the eligible retirement plan.
- (4) The provisions of (1) apply to any portion of a distribution, including after-tax employee contributions that are not includible in gross income. Any portion of a distribution that consists of after-tax employee contributions that are not includible in gross income may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan that agrees to separately account for the amounts transferred, including separate accounting for the pre-tax and post-tax amounts. The amount transferred shall be treated as

consisting first of the portion of the distribution that is includible in gross income, determined without regard to Code Section 402(c)(1).

(5) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.005-238.715
Hist.: PERS 11-1998, f. & cert. ef. 12-17-98; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05

Adm. Order No.: PERS 9-2005

Filed with Sec. of State: 2-22-2005

Certified to be Effective: 2-22-05

Notice Publication Date: 12-1-04

Rules Amended: 459-030-0011, 459-030-0025, 459-030-0030

Rules Repealed: 459-030-0000, 459-030-0001

Subject: ORS 237.620 provides that all public employers of police officers and firefighters must participate in PERS with respect to those employees. However, Section (4) exempts a public employer from this requirement if it provides an alternative retirement plan that is "equal to or better than" (ETOB) PERS' retirement benefits. A 2003 legislative change to the statute added the requirement that the Public Employees Retirement Board shall test ETOB employers every two years to determine whether the public employer complies with the ETOB requirements. The proposed rule modifications clarify the testing process for ETOB employers.

Rules Coordinator: David K. Martin—(503) 603-7713

459-030-0011

"Equal To or Better Than" Exemption

(1) If a public employer provides retirement benefits to its police officers and firefighters that are equal to or better than the benefits that would be provided to them under the Oregon Public Service Retirement Plan, the public employer may petition the Board for exemption from participation of such employees. Such petition will be reviewed under the requirements and timelines of this division.

(2) The Board will review any exemption granted under this division every two years to determine whether the exempt public employer is complying with the requirements of this division.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 237.620
Hist.: PER 4-1978, f. & ef. 11-2-78; PERS 1-1989, f. & cert. ef. 12-4-89, Renumbered from 459-030-0020; PERS 9-2005, f. & cert. ef. 2-22-05

459-030-0025

Standards for Review of Police Officers and Firefighters Retirement Plans

(1) A determination whether a public employer provides retirement benefits to its police officers and firefighters that are equal to or better than the benefits that would be provided to them under the Oregon Public Service Retirement Plan (OPSRP) will be made as of the valuation date. The "valuation date" is the date set by the Board as of which the retirement benefits under the public employer's retirement plan and under the OPSRP retirement plan shall be compared.

(2) The Board will consider the aggregate total actuarial present value of all retirement benefits accrued since July 1, 1973 and projected to be accrued after the valuation date by the group of police officers and firefighters employed on the valuation date by the public employer. The projected benefits will compare the total value of benefits that would be accrued if the police officers and firefighters became members of OPSRP or remained in the plan being evaluated.

(a) The Board will not require that every retirement benefit for each individual employee be equal to or better than the particular benefit he or she would receive under OPSRP.

(b) The Board will require that the public employer's retirement plan or plans provide at least eighty percent (80%) of the actuarial present value of projected retirement benefits in each of the major categories of benefits available under OPSRP, namely: A service retirement; a disability retirement; a death benefit; and vesting.

(3) In conducting an actuarial review of a public employer's retirement plan for its police officers and firefighters, the actuary retained by the Board will use demographic data supplied by the employer to determine whether the retirement benefits provided under the plan are equal to or better than the benefits which would be provided under OPSRP. If the employer does not provide sufficient data in a timely manner, the actuary will use a hypothetical data set representing a demographic cross-section of police officers and firefighters who are subject to this division.

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(4) The Board will conduct its review based on its current actuarial assumptions for police officers and firefighters of public employers in OPSRP.

(5) The Board will consider the cost of the benefits to be provided and the proportion of the cost being paid by the public employer and the participating police officers and firefighters. The Board will consider whether the benefits to be provided by the employer are funded, and the adequacy of funding. Whether the benefits are provided by contract, trust or insurance, or a combination thereof shall have no effect on the decision to grant or deny the petition.

(6) In considering a public employer's retirement plan provisions, the Board will not value portability of pension credits, tax advantages, Social Security benefits or participation, and any worker's compensation component of a public employer's plan as determined by the employer.

(7) Additional actuarial assumptions as shall be needed to evaluate public employer plan provisions shall be considered by the Board's actuary to be consistent with assumptions specified in these rules. Any disputes as to the appropriateness of additional actuarial assumptions shall be resolved by the Board in its sole discretion.

Stat. Auth: ORS 238.650
Stats. Implemented: ORS 237.620
Hist.: PER 4-1978, f. & ef. 11-2-78; PER 15-1981, f. & ef. 11-23-81; PERS 1-1989, f. & cert. ef. 12-4-89; PERS 9-2005, f. & cert. ef. 2-22-05

459-030-0030

Board Action on Petition and Review of Order

(1) The actuary will issue a written report that concludes whether a public employer's plan meets the standards for receiving an exemption under OAR 459-030-0025. After receipt of the written actuarial review report and recommendations of staff, the Board will issue an order granting or denying the petition for exemption. No order denying a petition for exemption will be issued until at least 90 days after the actuary had delivered its report to the Board. During that period, the public employer may amend its plan to comply retroactive to the valuation date or file a written request for an extension. Upon filing of that request, the Board will not enter an order denying a petition for exemption for an additional 60 days after receiving the request. If a public employer submits an amended plan before the Board adopts an order denying the exemption, the actuary will submit a supplemental report on whether the amended plan meets the required standards under OAR 459-030-0025. The Board may adopt an order at any time after receiving the supplemental report.

(2) Within 60 days of the effective date of any order issued under this rule, the public employer, the affected public employees, or their labor representative may file a petition for rehearing or reconsideration pursuant to OAR 459-001-0010 and 459-001-0040.

(3) A public employer who has received an order denying its petition for exemption and who has exhausted its remedies under this division will join the Oregon Public Service Retirement Plan as of the following January 1, or such other date as the Board directs in its order.

Stat. Auth: ORS 238.650
Stats. Implemented: ORS 237.620
Hist.: PER 4-1978, f. & ef. 11-2-78; PERS 1-1989, f. & cert. ef. 12-4-89; PERS 9-2005, f. & cert. ef. 2-22-05

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

Adm. Order No.: ODA 1-2005

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

Certified to be Effective: 3-3-05

Notice Publication Date: 2-1-05

Rules Amended: 583-030-0025

Subject: Revises definitions of types of degree-granting institutions.

Rules Coordinator: Tracy Richardson—(541) 687-7443

583-030-0025

Eligibility to Apply for Degree Authorization

(1) To be eligible to apply for initial or renewed authorization to offer a residential or semi-residential degree to Oregon residents, or to offer any degree from within Oregon to persons anywhere, a school must ordinarily appoint a responsible administrator who resides and has a business address and telephone within the state, who may transact the essential business of application, and who in any case shall be made an informed party to all such business. Alternative liaison arrangements may be permitted at the discretion of the Office where a non-Oregon school plans an unusually small or narrowly specialized operation within this state, provided that no

degree will be offered from within Oregon to students who did not receive their residential instruction here.

(2) An applicant school shall provide evidence that it can employ sufficient faculty to enable all students to begin work toward a degree at a rate equivalent to at least half-time study. The school shall have reasonable prospects of obtaining facilities and other resources consistent with its academic plans at the outset of operation.

(3) No school shall be eligible to apply for authorization to offer in or from Oregon any instruction or other services leading to a doctor's degree before it has obtained accreditation or pre-accreditation candidacy at or above the bachelor's degree level recognized by the U.S. Secretary of Education or by the Council for Higher Education Accreditation. However, offer of doctoral programs in another state by an unaccredited school will not automatically disqualify such school from authorization to offer degrees below the doctoral level in Oregon if one or more of the doctoral programs would evidently qualify to be considered for Oregon authorization immediately upon becoming accredited. The only exception to this provision is that a proposed school offering one or more doctoral programs leading to professional licensure in a field in which Oregon has such licensure may apply for ODA approval. In such cases, the school proposing to offer doctoral programs may apply for ODA approval only if the program is designed and intended to meet the standards for licensure required by the appropriate Oregon professional licensing board.

(4) A foreign (non-U.S.) school is eligible to apply for Oregon approval if it is approved to offer degrees by the appropriate agency in its home country and ODA finds that its home country has adequate oversight of academic programs. Foreign schools are not limited to offering in Oregon the same degrees for which they have approval in their home country, but may not offer degrees at a higher level in Oregon than those for which they have authorization in their home country.

Stat. Auth.: ORS 348.606
Stats. Implemented: ORS 348.603 & 348.606
Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 1-2005, f. & cert. ef. 3-3-05

Adm. Order No.: ODA 2-2005

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

Certified to be Effective: 3-3-05

Notice Publication Date: 2-1-05

Rules Amended: 583-050-0011

Subject: Revises definitions of types of degree-granting institutions.

Rules Coordinator: Tracy Richardson—(541) 687-7443

583-050-0011

Definitions of Terms

(1) "Office" means Office of Degree Authorization, as represented by the administrator or designated agent.

(2)(a) "Degree" means any academic or honorary title, rank, or status designated by a symbol or by a series of letters or words—such as, but not limited to, associate, bachelor, master, doctor, and forms or abbreviations thereof, that signifies, purports, or may generally be taken to signify:

(A) Completion of a course of instruction at the college or university level; or

(B) Demonstration of achievement or proficiency comparable to such completion; or

(C) Recognition for non-academic learning, public service, or other reason of distinction comparable to such completion.

(b) "Degree" does not refer to a certificate or diploma signified by a series of letters or words unlikely to be confused with a degree, clearly intended not to be mistaken for a degree, and represented to the public so as to prevent such confusion or error.

(3) "Confer a degree" means give, grant, award, bestow, or present orally or in writing any symbol or series of letters or words that would lead the recipient to believe it was a degree that had been received.

(4) "Claim a degree" means to present orally, or in writing or in electronic form any symbol or series of letters or words that would lead the listener or reader to believe a degree had been received and is possessed by the person speaking or writing, for purposes related to employment, application for employment, professional advancement, qualification for public office, teaching, offering professional services or any other use as a public credential, whether or not such use results in monetary gain.

(5) "School" means any person or persons, whether incorporated or not, engaging or appearing to engage in the activities of a school, college, university, institute, academy, seminary, conservatory, or any other such

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educational entity, or of any organized group of such entities. The activities attributable to a school include instruction, measurement of achievement or proficiency, or recognition of educational attainment or comparable public distinction.

(6) "Accredited" means accredited and approved to offer degrees at the specified level by an agency or association recognized as an accreditor by the U.S. Secretary of Education, under the 1965 Higher Education Act as amended at the time of recognition, or having candidacy status with such an accrediting agency or association whose pre-accreditation is also recognized specifically for HEA purposes by the Secretary of Education.

(7) "Foreign equivalent of such accreditation" means authorization by a non-U.S. government found by ODA to have standards at least as stringent as those required by U.S. approved accrediting agencies at the same degree level. This determination may be made through one or more of the following methods at ODA's discretion:

(a) Direct investigation of foreign standards;

(b) Reliance on an evaluation and determination made by the American Association of Collegiate Registrars and Admissions Officers; or

(c) Evaluation of the transferability of courses and degrees earned in the foreign country to accredited Oregon institutions at similar degree levels.

(d) To be valid under ORS 348.609, a non-U.S. degree must be acceptable for general and professional use within the approving nation on the same terms as degrees issued by that nation's other nationally-approved schools.

(8) "Academic Standards" means those standards in 583-030-0035 or the equivalent standards of an accrediting body that relate to admission requirements, length of program, content of curriculum, award of credit and faculty qualifications.

(9) "Standard School" means a school that is accredited by a federal-ly recognized U.S.-based accreditor, has ODA approval to issue degrees in Oregon, has ODA approval as a non-Oregon U.S. based school under ORS 348.609(d) or has ODA approval as a foreign school under ORS 348.609(a).

(10) "Diploma mill" or "degree mill" means an entity that is not a standard school and meets any one of the following conditions.

(a) Issues degrees without requiring sufficient college-level student academic work.

(b) Is a U.S. entity without appropriate governmental approval to issue degrees.

(c) Is a non-U.S. entity that has not demonstrated the foreign equivalent of U.S. accreditation.

(11) Valid degree means a degree from a standard school.

(12) "College level work" required for a degree means academic or technical work at a level demonstrably higher than that required in the final year of high school and demonstrably higher than work required for degrees at a lower level than the degree in question. From lowest to highest, degree levels are associate, bachelor's, master's and doctoral. Professional degree levels may vary. College level work is characterized by analysis, synthesis and application in which students demonstrate an integration of knowledge, skills and critical thinking. Award of credit for achieving appropriate scores on ODA-approved nationally normed college-level examinations such as those from College Level Examination Program, American Council on Education, Advanced Placement or New York Regents meets this standard.

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

Stat. Auth.: ORS 348.609

Stats. Implemented: ORS 348.603 & 348.609

Hist.: ODA 2-1998, f. & cert. ef. 8-12-98; ODA 3-2000, f. & cert. ef. 8-8-00; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 3-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2005, f. & cert. ef. 3-3-05

Oregon University System Chapter 580

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

Filed with Sec. of State: 3-14-2005

Certified to be Effective: 3-14-05 thru 9-6-05

Notice Publication Date:

Rules Adopted: 580-021-0029

Subject: This rule establishes career development leave as an OUS policy, with implementation rules under the authority of each university. The employer policy fulfills requirements of ORS 238A.025(3)(d), granting up to one calendar year of unpaid leave that

does not constitute a break in service for members of the Public Employees Retirement System Chapter 238 pension plan.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-021-0029

Career Development Leave

Career development leave is available to unclassified, faculty and classified employees of Oregon University System institutions as leave without pay, subject to the approval of the employing institution.

Stat Auth. ORS 351.070, ORS 238A.025

Stats. Implemented:

Hist.: OSSHE 3-2005(Temp), f. & cert. ef. 3-14-05 thru 9-6-05

Oregon University System, Western Oregon University Chapter 574

Adm. Order No.: WOU 1-2005

Filed with Sec. of State: 3-8-2005

Certified to be Effective: 3-8-05

Notice Publication Date: 2-1-05

Rules Amended: 574-050-0005

Subject: Amendments will allow for increases, additions, and revisions of special course fees and general services fees.

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: Publications 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

Oregon Youth Authority Chapter 416

Adm. Order No.: OYA 5-2005

Filed with Sec. of State: 3-9-2005

Certified to be Effective: 3-9-05

Notice Publication Date: 1-1-05

Rules Amended: 416-530-0010

Subject: This rule is amended to redefine "respite provider" by removing the language "and not a member of the household."

Rules Coordinator: Kimberly Walker—(503) 378-3864

416-530-0010

Definitions

(1) Applicant: A person who applies for a certificate of approval to operate and maintain a foster home, including persons who seek initial certification or re-certification.

(2) Case Plan: A formal plan with prescribed interventions and documentation requirements and a tool to assist staff in managing cases, setting goals and reviewing youths' interventions and progress. A Case Plan constitutes and fulfills the requirements of the Reformation Plan as defined in ORS 420A.005, 420A.125 and 420A.010 and is created and maintained in the statewide Juvenile Justice Information System (JJIS).

(3) Certificate: A certificate of approval, issued by the OYA, to operate a foster home where offenders in OYA custody are placed.

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(4) Certification process: The process of initial or renewal application for certification to operate a foster home.

(5) Criminal history check: The process used by the OYA to conduct criminal records background checks on persons pursuant to these rules and OAR chapter 416, division 800, including computerized and fingerprint-based processes.

(6) Denial: The refusal of the OYA to issue a certificate of approval (including re-certification) to operate a foster home.

(7) Discipline: A process by which foster parents and OYA assist offenders to develop the self-control and self-direction necessary to assume responsibilities, make daily living decisions, and learn to live in conformity with accepted levels of social behavior.

(8) Domestic animals: Any of various animals domesticated so as to live and breed in a tame condition as household pets. Examples of domestic animals include but are not limited to dogs, cats, and horses.

(9) Foster parent employee: Any person receiving compensation from foster parents for assistance in the care and supervision of offenders placed in the foster home.

(10) Foster care maintenance payment: The OYA's monthly payment to the foster parent to cover expenses such as the offender's room, board, clothing, allowance, personal incidentals, transportation, respite provider, educational supplies, or other costs approved by the OYA.

(11) Foster home: A home in the community which is certified by the OYA and maintained and lived in by a foster parent who provides supervision, food, and lodging for offenders in OYA custody.

(12) Foster parent: A person certified by the OYA who demonstrates special competence to supervise offenders with serious social and/or behavioral maladaptive characteristics in a foster home setting. A foster parent must be unrelated to an offender by blood or marriage. Foster parents provide supervision, food, and lodging to offenders as the offenders progress through their case plan.

(13) Family foster home agreement: A written agreement between the OYA and the foster parent stating mutual expectations of the parties.

(14) Home study: The assessment process, conducted prior to issuance of a certificate, to determine an applicant's ability to provide foster care services to offenders.

(15) Information required: All information requested by the OYA, including information used to process criminal history checks.

(16) Multidisciplinary Team (MDT): A group of persons responsible for developing comprehensive case plans for offenders. The process is a collaborative effort between OYA staff, the offender's biological and foster families and service providers. The MDT is responsible for ensuring that case plans are developed, reviewed and revised.

(17) Mechanical restraint: Any apparatus, device, or contraption applied or affixed to the offender to limit movement.

(18) Members of household: Any person who lives in the foster home or who assists in the care provided to offenders including but not limited to the provision of tutoring, recreation, relief care, household chores, or other services, whether paid or unpaid.

(19) Offender: A person who has been found to be within the jurisdiction of the juvenile court under ORS 415C.005 for an act committed when the person was under 18 years of age.

(20) Physical force: To physically force or constrain the movement of a person in order to prevent self-harm, harm to others, damage to property, or to remove a person from a scene of danger.

(21) Psychotropic medications: Medication prescribed with the intent to affect or alter thought processes, mood, or behavior, including but not limited to, anti-psychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

(22) Punishment: The intentional infliction of physical or emotional pain. Punishment includes, but is not limited to: Physical force or threat of physical force inflicted in any manner upon an offender; verbal abuse, including derogatory remarks about the offender or his/her family; denial of food, clothing, or shelter; assignment of unreasonably strenuous exercise or work; punishment for bed-wetting; delegating or permitting punishment of an offender by another offender; and use of cold shower as punishment.

(23) Regular certificate: A certificate of approval issued by the OYA, for a period of one year, when all foster care standards have been met.

(24) Respite care: A temporary arrangement between the foster parent and the respite provider to allow the foster parent(s) time away of 12 hours or more from the offender.

(25) Respite provider: An individual approved by the OYA who is at least 21 years of age who temporarily assists with supervision of offenders when the foster parent is not available.

(26) Revocation: The action taken to rescind a foster home certificate of approval after the OYA determines that the foster parent or the foster home is in non-compliance with statute, administrative rule(s) or the foster parent agreement with OYA.

(27) Special certificate: A conditional certificate of approval that limits the foster home to care and supervision of a specific offender, or other specified offenders, under specific conditions.

(28) Suspension: A temporary withdrawal of the foster home certificate after the OYA determines that the foster home is in non-compliance with statute, administrative rule(s) or the foster parent agreement with the OYA.

(29) Volunteer: Any person who is not a member of the household and who assists, for no compensation, with the supervision of offenders and with other activities, including but not limited to, food preparation, household chores, recreation, tutoring, mentoring, or respite care.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 5-2005, f. & cert. ef. 3-9-05

Secretary of State, Archives Division Chapter 166

Adm. Order No.: OSA 1-2005

Filed with Sec. of State: 2-28-2005

Certified to be Effective: 2-28-05

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

Rules Amended: 166-300-0015, 166-300-0025

Subject: Deletes Administrative, General, and Ephemeral correspondence categories currently found in OAR 166-300-0015; deletes the fiscal correspondence category in OAR 166-300-0025; and replaces them with one Correspondence series that will be found in OAR 166-300-0015.

Rules Coordinator: Julie Yamaka—(503) 373-0701, ext. 240

166-300-0015

Administrative Records

(1) **Administrative Rule Preparation Records** Records document the formulation, development, notice, and filing of an agency's administrative rules. Administrative rules may be developed through the activities and actions of an agency-appointed advisory committee. Records may include but are not limited to committee minutes and agendas, committee roster, draft rules and work notes, correspondence, copies of administrative orders filed with the Secretary of State (Notice of Proposed Rulemaking, Notice of Proposed Rulemaking Hearing, Statement of Need and Fiscal Impact, Statement of Need and Justification, Certificate and Order for Filing Permanent [or Temporary] Administrative Rules), and public comments and testimony. Administrative rule preparation records must be retained according to this schedule regardless of whether the rule has been renumbered, or repealed and re-adopted under a new rule number. *The Secretary of State maintains the statewide record copy of the Oregon Administrative Rules, Oregon Bulletin, and filed administrative orders.* (Retention: (a) Retain hearing audio or videotapes: until transcribed or summarized, destroy; (b) Retain all other Administrative Rule records: 10 years after repeal of entire rule, destroy).

(2) **Agency Organizational Records** Records document the organizational arrangement and administrative structure of an agency. Records may include but are not limited to organizational statements, organizational charts depicting the organization of an agency and/or its divisions and programs, studies determining the merit and feasibility of reorganization plans, and other studies related to administrative hierarchy. (Retention: Retain 2 years, destroy).

(3) **Attorney General Opinions** Records document Attorney General Opinions and attorney's letters of advice. Records may include but are not limited to requests for opinions; opinions; letters of advice; copies of legislative bills, statutes, and administrative rules; and correspondence. *The Department of Justice maintains the statewide record copy.* (Retention: Retain 10 years, destroy).

(4) **Business Plan Records** Records document the needs assessment, planning, implementation, and review of an agency's functions, programs,

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and goals. Records may include but are not limited to management plans, directives, organizational charts, correspondence, and related records. (Retention: (a) Retain final document: 6 years, destroy; (b) Retain other business plan records: 1 year after final document produced, destroy).

(5) **Calendar and Scheduling Records** Records document the scheduling of events and activities involving agency staff and/or resources, (such as meeting rooms, audio-visual equipment, and vehicles). Records may include but are not limited to schedules, desk calendars, reservation logs, lists, requests, and related records. (Retention: Retain 1 year, destroy).

(6) **Conference, Seminar, and Training Program Records** Records document the design and presentation of training programs and events offered or sponsored by the agency. These events may include but are not limited to conferences, conventions, seminars, training classes, workshops, and similar gatherings. Records may include but are not limited to class descriptions, instructor certifications, planning documentation, instructional materials, course outlines, class enrollment and attendance records, and related records. SEE ALSO Employee Training Records in the Personnel Records section for individual employee training records. (Retention: (a) Retain class enrollment and attendance records: 2 years, destroy; (b) Retain all other records: 5 years, destroy).

(7) **Contracts and Agreements** Records document the negotiation, execution, completion, and termination of legal agreements between an agency and other parties. Records may include but are not limited to the official contract, lease, or agreement, amendments, exhibits, addenda, legal records, contract review records, and related documentation and correspondence. Records do not include property records. *Note: Agencies that enter into contracts with the federal government must ensure that their contracts and agreements meet federal requirements specified in the Code of Federal Regulations.* (Retention: (a) Retain contracts or agreements documenting building construction, alterations, or repair: 10 years after substantial completion [as defined by ORS 12.135 (3)], destroy; (b) Retain all other contracts and agreements: 6 years after expiration, destroy).

(8) **Correspondence** Records that: 1. document communications created or received by an agency AND 2. directly relate to an agency program or agency administration AND 3. are not otherwise specified in the State Agency General Records Retention Schedule (OAR 166-300) or in state agency special schedules or in ORS 192.170. Records may include but are not limited to letters, memoranda, notes and electronic messages that communicate formal approvals, directions for action, and information about contracts, purchases, grants, personnel and particular projects or programs. (Disposition: File with the associated program or administrative records. Retentions for program records are found in state agency special schedules; retentions for administrative records are typically found in the State Agency General Records Retention Schedule. Communications not meeting the above criteria do not need to be filed and may be retained as needed.)

(9) **Key Assignment Records** Series documents the assignment of key cards, metal keys, or pass codes to agency employees for access into state-owned or leased buildings and/or offices. Information may include employee name and agency, work phone number, primary work location, status level, access privileges, key number, dates issued and returned, and pass code information. (Retention: Retain 6 months after employee separation or access status changed, destroy).

(10) **LEDS Certification Records** Records document the qualification of staff to perform Law Enforcement Data System (LEDS) searches on clients or agency employees. SEE ALSO Employee Personnel Records and Recruitment and Selection Records in the Personnel Records section. (Retention: Retain 2 years after employee ceases to be LEDS certified, destroy).

(11) **Legislative Development Advisory Committee Records** Records document the activities of agency-appointed advisory committees to help develop legislation for an agency. Records may include but are not limited to membership lists, minutes, agendas, fiscal impact statements, work notes, draft legislation, member comments on drafts, final committee version of legislation, and correspondence. (Retention: Retain 6 years, destroy).

(12) **Legislative Tracking Records** Records document the development and monitoring of legislation, which may have an impact on an agency's programs or policies. Records may include but are not limited to concept statements, proposals, bill logs, fiscal/organizational impact analysis papers, copies of bills, testimony summaries, committee reports, agendas, and correspondence. Does not include copies of legislative bills used strictly to monitor the legislative process. (Retention: Retain 6 years, destroy).

(13) **Litigation Records** Records document agency activities in litigation. Records may include but are not limited to court documents,

research materials, reports, press releases, and correspondence. (Retention: (a) Retain precedent-setting litigation records not scheduled by special schedule: 20 years after case closed, destroy; (b) Retain all other litigation records: 5 years after case closed, destroy).

(14) **Lobbyist Records** Records document lobbyist and lobbyist employer activities and are used to report these activities to the Government Standards and Practices Commission. Records may include but are not limited to expenditure reports, registration statements, termination records, guidelines, and correspondence. (Retention: (a) Retain expenditure reports: 4 years, destroy; (b) Retain all other lobbyist records: 5 years after last activity, destroy).

(15) **Mailing Lists** Records document the compilation of names and addresses of persons and organizations by an agency for mailing purposes. Lists are used to facilitate billing, community outreach, and other agency functions. (Retention: Retain until superseded or obsolete, destroy).

(16) **Parking Records** Records document parking provided for the public or agency staff. Records may include but are not limited to parking permits and applications, special permits, and permit receipts. (Retention: Retain 4 years, destroy).

(17) **Policy and Procedure Guidelines and Manuals** Records document internal instructions, rules, and guidelines for current agency policies and procedures. Records may include but are not limited to authorizing bulletins and advisories, manuals documenting departmental policies and procedures, handbooks, desk manuals, drafts, and related documentation. (Retention: (a) Retain final document: 6 years after superseded, destroy; (b) Retain all other policy development and planning records: 1 year after final document produced, destroy).

(18) **Policy Development and Planning Records** Records document the development, planning, implementation, assessment, and review of an agency's strategic or long-term goals through policies, programs, and activities. Records may include but are not limited to strategic and management plans, mission and goal statements, final policy statements and directives, organization charts, preliminary drafts, work notes, and correspondence. (Retention: (a) Retain final document: 20 years, destroy; (b) Retain all other policy development and planning records: 1 year after final document produced, destroy).

(19) **Postal Records** Records document transactions with the U.S. Postal Service and private carriers. Records may include but are not limited to postage meter records, receipts for express deliveries, registered and certified mail, insured mail, special delivery receipts and forms, loss reports, and correspondence. (Retention: Retain 4 years, destroy).

(20) **Press Releases** Records document agency information officially released to the media for dissemination to the public. Records may include but are not limited to press or news releases, prepared statements, public service announcements, and related documentation. (Retention: Retain 10 years, destroy).

(21) **Professional Membership Records** Records document agency-paid individual or institutional memberships and activities in professional organizations. (Retention: Retain 6 years, destroy).

(22) **Public Records Disclosure Request Records** Records document requests for disclosure of public records and provide a record of agency responses. Records may include but are not limited to requests for disclosure, request logs, approvals, denials, copies of petitions to the Attorney General for review of denials of disclosure, Attorney General Orders to grant or deny disclosure, and correspondence. (Retention: (a) Retain approved request records: 5 years, destroy; (b) Retain denied request records: 5 years after last action, destroy).

(23) **Publication Preparation Records** Records document the development of agency reports, studies, directories, leaflets, flyers, brochures, and other publications. Records may include but are not limited to working papers, mock-ups, drafts, and related correspondence. Stocks of publications are not public records as defined by ORS 192.005(5) and need not be scheduled. (Retention: Retain 1 year after publication printed, destroy).

(24) **Security Records** Records document security provided for agency buildings and grounds. Records may include but are not limited to security logs, sign-in sheets, security activity reports, incident reports, and related records. SEE ALSO Visitor Logs in this section. (Retention: Retain 5 years, destroy).

(25) **Signature Authorizations** Records documenting the authorization of employees designated to sign fiscal and contractual documents. Information may include authorization date, employee name, signature sample, position, conditions, remarks, dollar amount employee authorized to approve, and signature and name of person(s) approving authorization. (Retention: Retain 6 years after authorization superseded or expired, destroy).

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(26) **Staff Meeting Records** Records document the activities and proceedings of agency staff meetings that are not subject to Oregon's Public Meetings Law (ORS 192.610 to 192.690). Records may include but are not limited to minutes, notes, reports, and related documentation. (Retention: Retain 2 years, destroy).

(27) **Telecommunications Logs** Records document the tracking and status of telephone, voice mail, and facsimile (FAX) communications received or called by an agency. Information may include date and time of call, name of caller, phone number called or received, nature of call, and actions taken and results of call. (Retention: Retain 1 year, destroy).

(28) **Visitor Logs** Records document the registration of non-agency personnel and visitors into the agency's building and/or office area. Information may include but is not limited to date and time visitor checked in and out, visitor name, reason for visit, agency contact name, and badge identification number. SEE ALSO Security Records in this section. (Retention: Retain 1 year, destroy).

(29) **Work Orders** Series documents requests made for work to be done for one agency division by another agency division. Types of work requested include word processing and requests for information such as purchasing. Information may include but is not limited to dates requested and completed, requestor's name and division, name of individual completing work, and description of work to be done. SEE ALSO Facility Work Orders in the Facilities/Property Records section. (Retention: Retain 1 year after assignment completed or cancelled, destroy).

(30) **Year 2000 (Y2K) Planning Records** Records document the planning and development of Y2K Contingency Plans. Records may include but are not limited to meeting minutes, correspondence, draft plans, work notes, plan test results, and final plan. Information may include type of systems vulnerable to Y2K, level of priority, and party responsible for system solution or troubleshooting. (Retention: Retain 5 years, destroy).

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

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895

Hist.: OSA 1-1995, f. & cert. ef. 5-25-95; OSA 3-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 9-1998, f. & cert. ef. 12-30-98; OSA 1-1999, f. & cert. ef. 2-4-99, Renumbered from 166-303-0010; OSA 5-2002, f. & cert. ef. 10-14-02; OSA 1-2005, f. & cert. ef. 2-28-05

166-300-0025

Financial Records

(1) **Account Reconciliation Records** Records document the reconciliation of agency funds and accounts such as cash accounts with the State Treasury or other subsystems, capital asset to capital expenditures, or federal revenue to federal expenditures. Records may include printouts, worksheets, reports, schedules, and other supporting documentation. Records include those produced by the Statewide Financial Management Application (SFMA), the Department of Administrative Services Data Mart, and any other subsystems used by the agency. (Retention: Retain 6 years, destroy).

(2) **Account Transfer Records** Records document the authorized movement and transfer of funds between various accounting structures, such as the Statewide Financial Management Application (SFMA) Program Cost Account (PCA), Index, Program, Organizational Structures, and Treasury accounts. Records may include journal vouchers and transfer requests. Records include those produced by SFMA, the Department of Administrative Services Data Mart, and any other subsystems used by the agency. (Retention: (a) Retain records documenting transfers between statutory funds: 75 years, destroy; (b) Retain all other account transfer records: 6 years, destroy).

(3) **Accounting Structure Organizational Hierarchy Records** Records document the program and/or organization of an agency's accounting structure. The accounting structure includes items such as comptroller objects, agency objects, fund structure, and general ledger account and other codes and profiles. Records include those produced by the Statewide Financial Management Application (SFMA) the Department of Administrative Services Data Mart, and any other subsystems used by the agency. Records may include SFMA profile listings showing accounting structure and fund split tables. (Retention: Retain 6 years, destroy).

(4) **Accounting System Input Documents and Listings, and Agency Control Reports** Records document transactions or changes entered into the accounting system and other subsystems. They are used to control accuracy of data entry and to verify data input and batch control. Records include those produced by the Statewide Financial Management Application (SFMA), the Department of Administrative Services Data Mart, and any other subsystems used by the agency. Records include input documents, batch control reports, hand-posted spreadsheets, control reports, and memoranda. (Retention: Retain 4 years, destroy).

(5) **Accounts Payable Reports** Records document current outstanding liabilities and provide a record of payments of bills by the agency. They may also serve as a subsidiary ledger. Records include those produced by the Statewide Financial Management Application (SFMA), the Department of Administrative Services Data Mart, and any other subsystems used by the agency. (Retention: (a) Retain SFMA requestable reports: 6 years, destroy; (b) Retain all other accounts payable records: 6 years, destroy).

(6) **Accounts Receivable Reports** Records document billings and collections and provide a record of money owed to the agency. Serves as a subsidiary ledger of original entry/input and records amounts received from debtors for goods and/or services. Aging reports are used to monitor accounts that are outstanding and overdue. Records include those produced by the Statewide Financial Management Application (SFMA), the Department of Administrative Services Data Mart, and any other subsystems used by the agency. (Retention: (a) Retain monthly accounts receivable reports and SFMA requestable reports: 6 years, destroy; (b) Retain all other accounts receivable records: 6 years after collected or deemed uncollectible, destroy).

(7) **Annual Financial Reports** Records document the agency's annual financial condition and results of operation as of June 30 using trial balance data. These reports are used as a reference by the Secretary of State, Audits Division and included in the Comprehensive Annual Financial Report (CAFR) produced by the Department of Administrative Services. Records may include transmittal cover sheet, organization and function, combined balance sheet, combined statement of revenues, expenditures, changes in fund balance, notes to the financial statement, and exhibits. Exhibits may include a working trial balance by fund type, adjustments to accounting data, cash flow analysis, and other documents supporting statement amounts and notes. The Department of Administrative Services maintains the statewide record copy of the CAFR. (Retention: Retain 10 years, destroy).

(8) **Audit Reports** Records document an examination of the agency's fiscal condition, internal control and compliance policies and procedures, performance or other financial related audits by the Secretary of State, Audits Division; internal auditors; or independent auditors. Records include audit reports, supporting documentation, agency comments, and correspondence. The Secretary of State, Audits Division maintains the statewide record copy of their audits. SEE ALSO Internal Audit Reports in this section. (Retention: (a) Retain grant fund audit reports: 5 years or according to the terms (if greater than 5 years) specified in the grant, destroy; (b) Retain all other audit reports: 5 years, destroy).

(9) **Bank Statements** Records document the current status and transaction activity of agency funds held at a bank or at the State Treasury. Records may include bank/Treasury statements and support reconciliation records, validated deposit slips and/or paid check/warrant copies. (Retention: Retain 6 years, destroy).

(10) **Budget Allotment Reports** Records document the agency's containment within quarterly budget authorizations using expenditure, encumbrance, and budget data. Records are used to develop and monitor apportioned fiscal distributions. (Retention: Retain present and previous biennium, destroy).

(11) **Budget Preparation Records** Records document the agency's activity to plan, develop, estimate and propose biennial budget requests. Records may include budget requests, spreadsheets, expenditure projection work papers, preliminary division/section budget proposals, budget development schedules, allotment reports, decision packages, spending plans, funding formula factor analysis, compensation plan proposals, contingency/deviation plans, performance measures, fiscal impact analysis, and correspondence. Records may also include monthly trial balance summaries, expenditure detail reports, revenue detail reports, monthly encumbrance registers, and expenditure and revenue registers. (Retention: Retain present and previous biennium, destroy).

(12) **Cash Receipt Records** Records document tabulated and keyed-in transactions for cash received by the agency. Records may include cash register tapes or equivalent, copies of receipts, and batch sheets. SEE ALSO Receipts and Receipt Registers in this section. (Retention: Retain 6 years, destroy).

(13) **Check Cancellation Request Records** Records document the request to cancel checks issued and to request the issuance of duplicates. Records may include request memoranda and check photocopies. (Retention: Retain 6 years, destroy).

(14) **Check Registers** Records document an original entry listing which logs checks issued by the agency. Information includes date, check number, payee, and amount. (Retention: Retain 6 years, destroy).

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(15) **Checks** Records document redeemed checks written on agency accounts. Records may include redeemed, void and canceled checks, and supporting documentation. (Retention: Retain 6 years, destroy).

(16) **Competitive Bid Records** Records document the evaluation and award of bids to vendors and/or agencies and provides evidence of accepted and rejected bids. Records may include but are not limited to requests for proposals, bids, and information; bid and quote lists; notices of bid opening and award; comparison summaries; spreadsheets; tabulation worksheets; bid advertising records; tally sheets; bid specifications; and vendor correspondence. SEE ALSO Purchasing Records and Vendor Reports in this section. (Retention: Retain 6 years after bid awarded or canceled, destroy).

(17) **Credit Card Records** Records document the application and approval to use state-issued credit cards and purchases made with these cards. Records may include but are not limited to credit card applications, approvals, credit card transaction logs, credit card security and check-out records, monthly credit card statements, and purchasing documentation. (Retention: (a) Retain application and approvals: 3 years after card cancelled, revoked, or denied, destroy; (b) Retain all other credit card records: 6 years, destroy).

(18) **Debit/Credit Advices** Records document the receipt of and/or verification of special deposits or withdrawals and the adjustment of dollar amounts in funds because of recording errors or fund transfers between accounts. Information includes account number, debit/credit amount, authorization, and justification. (Retention: Retain 6 years, destroy).

(19) **Deposit Slips** Records document monies deposited in banks at privately operated institutions and the State Treasury. Records are used to reconcile and balance an agency's State Treasury or bank accounts. Information may include date and amount deposited. (Retention: Retain 6 years, destroy).

(20) **Emergency Board Request Records** Records document the agency's requests to the Legislative Emergency Board for additional funds or authority to spend funds between legislative sessions. Records may include but are not limited to requests, schedules and agendas, exhibits, organization charts, testimony summaries, fiscal analysis, legislative progress reports, revenue projections, reclassification plans, presentation drafts, performance measures, other exhibits, and correspondence. (Retention: Retain present and previous biennium, destroy).

(21) **Encumbrance Registers** Records document a listing of outstanding encumbrances (financial obligations), purchase commitments, and vouchers written to liquidate or reduce encumbrances. Records include those produced by the Statewide Financial Management Application (SFMA), the Department of Administrative Services Data Mart, and any other subsystems used by the agency. (Retention: Retain 3 years, destroy).

(22) **Expenditure and Revenue Reports** Records summarize expenditures, revenue, encumbrances, and budgetary data, and are used to monitor and control expenditures in accordance with Legislatively Approved Budgets. Records include those produced by the Statewide Financial Management Application (SFMA), the Department of Administrative Services Data Mart, and any other subsystems used by the agency. (Retention: (a) Retain monthly expenditure and revenue 6 years, destroy; (b) Retain SFMA expenditure and revenue projection reports: until superseded or obsolete, destroy; (c) Retain all other expenditure and revenue reports: 2 years, destroy).

(23) **General Ledger Transaction Reports** Records document all fiscal transactions of the agency for each month. Data is used to prepare an agency's financial statements. Records include those produced by the Statewide Financial Management Application (SFMA), the Department of Administrative Services Data Mart, and any other subsystems used by the agency. The Department of Administrative Services, Statewide Financial Management Services section maintains the statewide record copy of the General Ledger. (Retention: Retain 6 years, destroy).

(24) **Grant Records** Records document the application, evaluation, awarding, administration, monitoring, and status of grants in which the agency is the recipient, grantor, allocator, or administrator. Grants may be awarded from federal or state government, or other public or private funding sources. Records may include but are not limited to applications including project proposals and narratives, summaries, objectives, activities, budgets, exhibits, and award notification; grant evaluation records and recommendations concerning grant applications; grant administration records including progress reports, budgets, project objectives, proposals, and summaries; records documenting allocation of funds; contracts; records monitoring project plans and measuring achievement and performance; equipment inventories; financial reports, accounting records, audit reports, expenditure reports, and related correspondence and documentation.

Records include those produced by the Statewide Financial Management Application (SFMA), the Department of Administrative Services Data Mart, and any other subsystems used by the agency. (Retention: (a) Retain grant records, including SFMA requestable reports: 5 years after final or annual expenditure report accepted, destroy; (b) Retain unsuccessful grant applications: 3 years after rejection or withdrawal, destroy; (c) Retain capital asset records: 3 years after disposition of assets, destroy).

(25) **Internal Audit Reports** Records document financial and performance audits performed on an annual or project basis by agency-employed internal auditors or contracted auditors. Audits investigate potential problem areas and internal fiscal control structures and may include recommendations for improvement in agency systems. Records include audit reports, supporting documentation, agency comments, and correspondence. SEE ALSO Audit Reports in this section. (Retention: Retain 5 years, destroy).

(26) **Invoice Registers** Records document a listing of who was billed by the agency for services rendered and provide a detailed breakdown of individual invoice billings. Information includes invoice number, amount, date, item or service billed for, and billed party name. (Retention: Retain 6 years, destroy).

(27) **Invoices** Records document goods and services billed by the agency. Information may include invoice number, date, transaction description, identification of parties involved, prices, and terms of sale. (Retention: Retain 6 years, destroy).

(28) **Journal Entry Registers** Records document an account record of original entry/input and provides a record of debit and credit journal transactions. Information includes date, account number, action, and debit/credit amount. (Retention: Retain 6 years, destroy).

(29) **Legislatively Adopted Budgets** Records document the comprehensive financial plan for the agency's biennial operating budget that was approved by the legislature and forms a basis for appropriations. Records may include supplemental reports dealing with affirmative action, productivity, performance measures, improvement in programs, information systems, and other subjects. The Department of Administrative Services, Budget and Management section maintains the statewide record copies of Legislatively Adopted Budgets. (Retention: Retain 10 years, destroy).

(30) **Oregon State Treasury Reports** Records document reports generated by the Oregon State Treasury and are used to update an agency on account and fund status and activity, investment balances and transactions, and the agency's activities in issuing debt. Records include banking, account, and other finance reports, investment reports, and debt management reports. (Retention: (a) Retain daily account reports: until superseded by monthly reports which summarize daily activity, destroy; (b) Retain debt management reports: 6 years after indebtedness is retired, whether by maturing or being called, destroy; (c) Retain all other State Treasury reports: 6 years, destroy).

(31) **Petty Cash Fund** Records document petty cash activity for the agency. Records include requests and authorizations to establish petty cash funds, ledgers, statements, requests for disbursements, copies of receipts and invoices. (Retention: Retain 6 years, destroy).

(32) **Purchasing Records** Records document the purchase of goods and services by the agency. Records may include purchase orders and requests, purchase authorizations, requisitions, contract release orders, price agreements, material/cost specifications, copy center/printing orders, and correspondence. SEE ALSO Competitive Bid Records and Vendor Reports in this section. (Retention: Retain 6 years, destroy).

(33) **Receipt Registers** Records document a detailed list of processed cash receipt transactions and is used to verify receipts, estimate revenue, and reconcile accounts. Records include those produced by the Statewide Financial Management Application (SFMA), the Department of Administrative Services Data Mart, and any other subsystems used by the agency. (Retention: Retain 6 years, destroy).

(34) **Receipts** Records document acknowledgment of payment and/or delivery. Information includes date, amount, signature, items received or delivered, and receipt number. SEE ALSO Cash Receipt Records in this section. (Retention: Retain 6 years, destroy).

(35) **Travel Expense Records** Records document reimbursement claims made by employees for travel and related expenses. Records may include travel expense detail sheets, supporting documentation, and correspondence. (Retention: Retain 6 years, destroy).

(36) **Trial Balance Reports** Records document a summary of general ledger accounts and shows the agency's current financial position. Reports are used to prepare the agency's financial statements. Records include those produced by the Statewide Financial Management Application (SFMA), the Department of Administrative Services Data

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Mart, and any other subsystems used by the agency. (Retention: Retain 6 years, destroy).

(36) **Vendor Reports** Records document vendor data, which is used to select vendors, and to track voucher and purchase order status. Records include those produced by the Statewide Financial Management Application (SFMA), Data Mart, and any other subsystems used by the agency. SEE ALSO Purchasing Records in this section. (Retention: (a) Retain annual vendor reports: 6 years, destroy; (b) Retain all other vendor reports: until superseded or obsolete, destroy).

(37) **Voucher Registers** Records document a book of original entry and provides a listing of vouchered disbursement transactions. Records include those produced by the Statewide Financial Management Application (SFMA), the Department of Administrative Services Data Mart, and any other subsystems used by agency. (Retention: Retain 6 years, destroy).

(38) **Vouchers** Records document individually authorized expenditure transactions. Records provide the documentation and backup for all payments to vendors. Voucher files may contain invoices, receipts, travel expense detail sheets, purchase requests, purchase orders, cancelled checks, other supporting documents, and correspondence. Records include those produced by the Statewide Financial Management Application (SFMA), the Department of Administrative Services Data Mart, and any other subsystems used by the agency. (Retention: Retain 6 years, destroy).

(39) **Warrant Cancellation Request Records** Records document the request to cancel warrants issued on vouchers, and to request the issue of duplicates. If the warrant is physically available, it is cancelled and re-issued if necessary. However, if the warrant is not physically present, an affidavit is required. Records include request memoranda, affidavits, photocopies and memoranda from the Department of Administrative Services confirming re-issuance. (Retention: Retain 6 years, destroy).

(40) **Warrant Registers** Records document a listing of warrants issued by an agency. Information includes date, payee, warrant number, and amount. (Retention: Retain 6 years, destroy).

(41) **Warrants** Records document the promise to pay and the authorization for claim payments. Records may include redeemed, void cancelled, and undeliverable warrants, and supporting documentation. (Retention: (a) Retain undeliverable warrant: until expired, destroy (b) Retain all other warrants: 6 years, destroy).

(42) **1099-Miscellaneous Forms** Records document the agency's responsibility for ensuring vendor payments are accurate. If vendor information is incorrect, the agency prepares a '1099-Misc. Change Request' and forwards it to the Statewide Financial Management Services section for correct to the 1099-Misc. form. The Statewide Financial Management Application (SFMA) tracks vendor payments and produces 1099-Misc. forms for federal reporting. (Retention: Retain 6 years, destroy).

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895

Hist.: OSA 3-1995, f. & cert. ef. 5-25-95, OSA 3-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 9-1998, f. & cert. ef. 12-30-98; OSA 1-1999, f. & cert. ef. 2-4-99. Renumbered from 166-305-0010; OSA 5-2002, f. & cert. ef. 10-14-02; OSA 1-2005, f. & cert. ef. 2-28-05

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**Secretary of State,
Business Services Division
Chapter 167**

Adm. Order No.: BSD 1-2005(Temp)

Filed with Sec. of State: 2-25-2005

Certified to be Effective: 3-1-05 thru 8-28-05

Notice Publication Date:

Rules Adopted: 167-001-0007, 167-001-0065, 167-001-0081, 167-001-0085, 167-001-0300, 167-001-0360, 167-001-0600, 167-001-0605, 167-001-0620, 167-001-0625, 167-001-0630, 167-001-0635

Rules Amended: 167-001-0005, 167-001-0010, 167-001-0020, 167-001-0030, 167-001-0070

Subject: The current Secretary of State Rules for Public Contracting will expire on March 1, 2005, due to the passage of HB 2341 in the last legislative session. While it is the Secretary's intent to be subject to the Attorney General Model Public Contracting Rules, as defined in ORS 279A.065(4), in order to operate effectively, these additional rules are promulgated under the authority of ORS 279A.070.

Rules Coordinator: Robin Rickard—(503) 986-2357

167-001-0005

Model Rules of Procedure

Pursuant to ORS 183.341, the Secretary of State adopts for use by its Business Services Division the Attorney General's Model Rules of Procedure as amended and effective on March 1, 2005.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the Attorney General or Business Services Division.]

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183

Hist.: SS 1-1992, f. & cert. ef. 8-17-92; BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

167-001-0007

Application of Rules

These OAR chapter 167, division 001 rules apply to public contracts of the Secretary of State first advertised, but if not advertised then entered into, on or after March 1, 2005.

Stat. Auth.: ORS 279A.065 & 279A.070

Stats. Implemented: ORS 279A.020, 279A.030 & 279A.065

Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

167-001-0010

Notice of Proposed Rulemaking

Prior to the adoption, amendment or repeal of any permanent rule, the Secretary of State, Business Services Division, shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360(3) at least 21 days prior to the effective date of the intended action.

(2) By mailing a copy of the notice to persons on the Secretary of State's Business Services Division mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule; and

(3) By mailing or furnishing a copy of the notice to:

(a) The Capitol Press Room;

(b) Associated Press; and

(c) Attorney General.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183

Hist.: SS 2-1992, f. & cert. ef. 10-13-92; BSD 1-1995, f. & cert. ef. 5-17-95; BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

167-001-0020

Purpose

The Divisions of the Oregon Secretary of State (Secretary) occasionally require the services of an outside party to accomplish all or part of a project. The Secretary intends that the Attorney General's Model Public Contracting Rules, Chapter 137, will govern all Secretary of State public contracting. It is the intent of the Secretary that these Model Rules will be accepted by default in accordance with the provisions of ORS 279A.065(4).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: SS 3-1992, f. & cert. ef. 10-13-92; BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

167-001-0030

Basic Policy

(1) The Secretary will contract for personal services when the specialized skills, knowledge or resources are not available within the Secretary of State's office; when the work cannot be done in a reasonable time with the Secretary's own work force; when it will be less expensive to contract for the work; or when an independent and impartial evaluation of a situation by recognized professionals is required. Contracts will be granted only after approval of the Secretary or his/her designee.

(2) Agreement for services of a contractor who is a member of the Public Employees' Retirement System and who is employed in another public agency may be by interagency agreement.

(3) For purposes of the Secretary, personal services means the services or type of services performed under a personal services contract. A 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, 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, information technology consultant, broadcaster, artist (including a photographer, filmmaker, painter, weaver or sculptor) or consultant.

Stat. Auth.: ORS 279A.065 & 279A.070

Stats. Implemented: ORS 279A.015

Hist.: SS 3-1992, f. & cert. ef. 10-13-92; BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

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167-001-0065

Small Purchases

The Secretary will conduct small purchases as defined in ORS 279B.065 as follows:

(1) Any procurement of goods or services not exceeding \$5,000 may be awarded by using non-competitive negotiations.

(2) Any small procurement may be amended in accordance with OAR 137-047-0800, but the cumulative amendments shall not increase the total contract price to greater than \$6,000.00.

(3) A procurement may not be artificially divided or fragmented so as to constitute a small procurement, pursuant to ORS 279B.065(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.100 & 279A.105

Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

167-001-0070

Notification of the Advocate for Minority, Women, and Emerging Small Business

The Secretary of State will comply with the requirements of ORS 200.035.

Stat. Auth.: ORS 279A.065 & 279A.070

Stats. Implemented: ORS 279A.100 & 279A.105

Hist.: SS 3-1992, f. & cert. ef. 10-13-92; BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

167-001-0081

Reinstatement of Expired Contracts

(1) The Secretary of State, Business Services Division Director may approve reinstatement of an expired Personal Services Contract if the following conditions are met:

(a) Failure to renew or extend the Personal Services Contract would prevent the Secretary from carrying out the duties of the Secretary;

(b) Written request for reinstatement is submitted to the Business Services Division Director for approval within ninety (90) days after the expiration of the original contract;

(c) A written statement justifying the Contractor's completion of the work after expiration of the contract, there is no change in the Statement of Work, and either:

(A) The reinstatement is exclusively for the purpose of permitting completion of the work or services for no additional compensation; or

(B) When services are of a continuing or repetitive nature which are compensated at an hourly, daily or similar periodic rate, the reinstatement either:

(i) Does not increase the rate of compensation; or

(ii) Does not increase the rate of compensation so as to exceed the rate of the increase determined by comparing the Portland, Oregon Metropolitan Area Consumer Price Index (all items) published immediately prior to the date the original contract was established with the same Index published immediately prior to the date of the reinstatement and extension.

(2) When a Personal Services Contract is reinstated pursuant to this section, the Secretary may compensate the Contractor, at the rate of compensation established in the original contract, for work performed in the interim between the expiration of the original contract and the execution and approval(s) of the extension or amendment.

(3) This rule authorizes only one reinstatement of a Personal Services Contract.

(4) No reinstatement of a Personal Services Contract shall modify the original contract except with respect to the time for performance.

(5) If the reinstatement of a Personal Services Contract pursuant to this rule raises the aggregate amount of compensation to a level that requires Attorney General approval under ORS 291.045 and 291.047, the Secretary shall obtain such approval or ratification before the extension becomes binding and before any services may be performed under the reinstated contract.

Stat. Auth.: ORS 279A.065 & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065, 279A.070 & 279A.140

Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

167-001-0085

Legal Sufficiency Review

Unless exempted by the Attorney General under ORS 291.045 and 291.047, all personal service (including architectural and engineering services contracts) and information technology contracts calling for payment in excess of \$75,000.00, and all other public contracts in excess of \$100,000.00, will require legal sufficiency review by the Department of Justice.

Stat. Auth.: ORS 291.045 & 291.047

Stats. Implemented: ORS 291.045 & 291.047

BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

167-001-0300

Electronic Public Notice

The Secretary may publish the advertisement (notice) for Offers on the Department of Administrative Services ORPIN Electronic Procurement System instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b). In addition, the Secretary may publish the advertisement on the Secretary's web-page.

Stat. Auth.: ORS 279A.065 & 279A.070

Stats. Implemented: ORS 279A.065, 279A.070 & 279B.055

BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

167-001-0360

Purchases Through Federal Programs

(1) The Secretary may purchase supplies and services under the Federal Programs identified in ORS 279A.180, without competitive sealed bidding, competitive sealed proposals or other competition required under ORS 279B.050 to 279B.085, provided that the Secretary has federal authorization to purchase through the program.

(2) To purchase through a Federal Program, the Secretary must document in its contract file that:

(a) The acquisition meets the Secretary's requirements;

(b) The price and other terms of the acquisition are advantageous to the Secretary;

(c) No other DAS price agreement for the supply or services exists, based upon the Secretary's review of the contracts on ORPIN;

(d) Preference programs, including but not limited to the Inmate Work Program of ORS 279A.025(2)(h);

(e) The Secretary may add to its contract such contract terms and conditions as are required by State statute or rules, if such additions do not conflict with the Federal Program's contract terms and conditions, including but not limited to prompt payment requirements, additional commercial terms, and conflict resolution.

Stat. Auth.: ORS 279A.065 & 279A.070

Stats. Implemented: ORS 279A.180

BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

167-001-0600

Policy

These rules supplement and do not replace ORS 244.010 through 244.400, for the purpose of applying the policy of ORS 244.010 to Oregon Secretary of State (Secretary) public contracting under the Public Contracting Code and related rules. The Secretary's public contracting is a public trust. The Secretary and contractors involved in public contracting must safeguard this public trust.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140

BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

167-001-0605

Selection and Award of Public Contracts

(1) Secretary officers, employees or agents involved in the process of the selection and award of public contracts must carefully review the provisions of ORS 244.040.

(2) Secretary officers, employees and agents are prohibited from soliciting or receiving gifts, which means something of economic value given to a public official or the public official's relative without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, and which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials.

(3) Secretary officers, employees and agents are prohibited from using their official position for personal or financial gain.

(4) Secretary officers, employees and agents are prohibited from using confidential information gained in the course of the screening and selection procedures for personal or financial gain.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140

BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

167-001-0620

Specifications

Secretary staff and providers may not develop specifications that primarily benefit only one provider, directly or indirectly, to the detriment of the Secretary.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140
BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

167-001-0625

Sole-Source

The Secretary may not select a sole-source procurement pursuant to ORS 279B.075 to avoid a competitive procurement if the purpose of the selection is to primarily benefit the provider, directly or indirectly, to the detriment of the Secretary or the best interest of the State.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279B.075 & 279A.140
BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

167-001-0630

Fragmentation

A procurement may not be artificially divided or fragmented so as to constitute a small procurement, pursuant to ORS 279B.065, or an intermediate procurement, pursuant to ORS 279B.070, in order to avoid competition.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279B.065
BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

167-001-0635

Agency and Provider Communications

(1) Secretary staff are encouraged to freely conduct market research in support of a procurement. This research includes but is not limited to: meetings, industry presentations, and demonstrations with any providers that may be able to meet a need for an approved procurement. Secretary staff are encouraged to meet with providers whose products or services can meet the Secretary's needs and to document the items discussed during the market research phase of Solicitation development. The research phase should end prior to a release of a solicitation or a request for quote, unless the solicitation provides for a different process that permits on-going research.

(2) Any communication between Secretary and providers after the solicitation release or request for a quote must only be made within the context of the solicitation document requirements, which may allow for discussions, negotiations, and addenda. Secretary purchasing staff are encouraged to respond to written inquiries by addenda or letter in a timely manner.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140
BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05

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**Secretary of State,
Corporation Division
Chapter 160**

Adm. Order No.: CORP 2-2005

Filed with Sec. of State: 3-1-2005

Certified to be Effective: 3-1-05

Notice Publication Date: 2-1-05

Rules Adopted: 160-010-0500

Subject: Requires that business registry filings must have disclosable information under ORS 194.445. Outlines Division procedure for Personal Safety Exemption requests of the Public Records Law under ORS 194.445.

Rules Coordinator: Kristine T. Hume—(503) 986-2356

160-010-0500

Personal Safety Exemption

The Secretary of State Corporation Division may dissolve, cancel or otherwise terminate a filing that is submitted with required information that is nondisclosable under ORS 192.445.

(1) For purposes of this rule, "personal information" means a person's home address, personal telephone number and personal electronic mail address.

(2) The following information included in records filed with the Corporation Division must be available for public inspection without regard to whether it constitutes personal information:

(a) The street address of a Registered Agent required to be filed under ORS 58, 60, 62, 63, 65, 67, 70, 128, and 554.

(b) The address of an applicant, authorized representative, incorporator, manager, member, organizer, partner, registrant or trustee required to be filed under ORS 58, 60, 62, 63, 65, 67, 70, 128, 554, 647, and 648.

(3) Pursuant to ORS 192.445, Personal Safety Exemption (PSE) requests that personal information contained in records filed with the Secretary of State Corporation Division be withheld from public disclosure will be processed in accordance with the procedures set out in OAR 137-004-0800.

(4) If the PSE request accompanies the submission of the record to which it pertains, the record will be filed and will be subject to public disclosure pending the Division's consideration of and issuance of a decision on the PSE request. If the PSE request applies to a record previously filed with the Division, the filing will remain effective and subject to public disclosure pending the Division's consideration of and issuance of a decision on the PSE request.

(5) If the Division grants a PSE request and the personal information subject to the PSE is of a type listed in paragraph (3) of this rule, the Division will include in the notice to the requestor a statement that in order for the filed record to remain valid and effective, disclosable information to substitute for the exempt personal information must be submitted to the Division within 30 days of the date of the notice. The statement will inform the requestor of the consequences of failure to provide substitute information. This statement will also be sent to the registered agent of any entity on whose behalf the filing was made if that entity might be affected by failure to provide substitute information.

(6) If the Division does not receive substitute information from the requestor or from an affected entity within the time provided in paragraph (5), the Division will cancel the filing to which the PSE request applies and will commence administrative dissolution of the affected entity or take such other action as is required by law as a consequence of the invalidity of the filing.

Stat. Auth.: ORS 56.014 & 56.022
Stats. Implemented:
Hist.: CORP 2-2005, f. & cert. ef. 3-1-05

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**Secretary of State,
Elections Division
Chapter 165**

Adm. Order No.: ELECT 1-2005(Temp)

Filed with Sec. of State: 3-15-2005

Certified to be Effective: 3-15-05 thru 5-17-05

Notice Publication Date:

Rules Adopted: 165-020-4040

Subject: The South Lane County Fire and Rescue District, Position #2 has a vacancy in office that occurred after the deadline for notifying candidates of vacancies in office, but before the 62nd day before the May 17, 2005 Regular District Election. This rule extends the deadlines for the Lane County Clerk to receive declarations of candidacy for the vacancy in office and allows the county to provide the public notice required under ORS 255.245.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-020-4040

Extended Candidate Filing Deadlines for South Lane County Fire and Rescue District, Position #2

The following deadlines apply: March 16, 2005: Last date for clerk to publish notice of vacancy in newspaper of general circulation in the district, in accordance with ORS 255.245. March 21, 2005: Last date for candidates to file declaration of candidacy with Lane County Clerk.

Stat. Auth.: ORS 246.150 & 255.245
Stats. Implemented: ORS 255.245
Hist.: ELECT 1-2005(Temp), f. & cert. ef. 3-15-05 thru 5-17-05

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**Travel Information Council
Chapter 733**

Adm. Order No.: TIC 1-2005(Temp)

Filed with Sec. of State: 3-14-2005

Certified to be Effective: 3-14-05 thru 9-9-05

Notice Publication Date:

Rules Amended: 733-030-0045

Subject: Logo signs located on the primary and secondary state highway system may display a maximum of six logo plaques per sign panel.

Rules Coordinator: Angela Willhite—(503) 378-4508

ADMINISTRATIVE RULES

733-030-0045

Special Requirements — Primary and Secondary System

(1) Location. The proposed location must be reviewed and approved by the engineer. In urban areas, no more than two supplemental signs per facility will be allowed.

(2) Composition. A maximum of four six logos for each type of service shall be displayed along each approach to the intersection. A maximum of two logos for each of two three different types of services may be combined on the same sign panel. The name of each type of service shall be displayed above its logo together with an appropriate legend such as NEXT RIGHT (LEFT) or a directional arrow.

(3) Size:

(a) Each logo shall be contained within a 24-inch-wide and 18-inch-high rectangular background area, including border;

(b) Legends: All letters used in the name of the type of service on the sign panel shall be four six- inch capital letters.

(4) Combination services signing (i.e., legend reading "FOOD/LODGING," displaying one facility's logo plaque) will be allowed in rural locations only. The customer applying for signing is the only facility available in the geographical area. Approval for Dual Services Signing will be under an agreement between TIC and the customer/facility. If another qualified facility is built in the area, the facility with the dual services signing will be required to display their plaques on two logo boards, one for each service. Facilities approved for Dual Services Signing will be required to pay 1-1/3 the annual fee for a facility in their area.

Stat. Auth.: ORS 377.700 - 377.840

Stats. Implemented: ORS 183.310 - 183.550

Hist.: TIC 1-1979(Temp), f. & ef. 7-26-79; TIC 2-1979, f. & ef. 9-28-79; TIC 1-1980, f. & ef. 5-5-80; TIC 2-1996, f. & cert. ef. 7-12-96; TIC 1-1997, f. & cert. ef. 2-13-97; TIC 2-1998, f. & cert. ef. 11-13-98; TIC 3-2004, f. & cert. ef. 11-15-04; TIC 1-2005(Temp), f. & cert. ef. 3-14-05 thru 9-9-05

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| 115-045-0020 | 1-24-05 | Amend | 3-1-05 | 123-065-1750 | 2-25-05 | Amend | 4-1-05 |
| 115-045-0021 | 1-24-05 | Amend | 3-1-05 | 123-065-1920 | 2-25-05 | Adopt | 4-1-05 |
| 115-045-0023 | 1-24-05 | Amend | 3-1-05 | 123-065-2000 | 2-25-05 | Repeal | 4-1-05 |
| 115-045-0025 | 1-24-05 | Amend | 3-1-05 | 123-065-2500 | 2-25-05 | Amend | 4-1-05 |
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| 123-065-0100 | 2-25-05 | Amend | 4-1-05 | 123-065-3030 | 2-25-05 | Amend | 4-1-05 |
| 123-065-0140 | 2-25-05 | Amend | 4-1-05 | 123-065-3110 | 2-25-05 | Amend | 4-1-05 |
| 123-065-0150 | 2-25-05 | Amend | 4-1-05 | 123-065-3130 | 2-25-05 | Amend | 4-1-05 |
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| 123-065-0210 | 2-25-05 | Amend | 4-1-05 | 123-065-3170 | 2-25-05 | Amend | 4-1-05 |
| 123-065-0220 | 2-25-05 | Amend | 4-1-05 | 123-065-3200 | 2-25-05 | Amend | 4-1-05 |
| 123-065-0230 | 2-25-05 | Amend | 4-1-05 | 123-065-3230 | 2-25-05 | Amend | 4-1-05 |
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| 123-065-0255 | 2-25-05 | Adopt | 4-1-05 | 123-065-3330 | 2-25-05 | Amend | 4-1-05 |
| 123-065-0300 | 2-25-05 | Amend | 4-1-05 | 123-065-3360 | 2-25-05 | Amend | 4-1-05 |
| 123-065-0310 | 2-25-05 | Amend | 4-1-05 | 123-065-3400 | 2-25-05 | Amend | 4-1-05 |
| 123-065-0320 | 2-25-05 | Amend | 4-1-05 | 123-065-3430 | 2-25-05 | Amend | 4-1-05 |
| 123-065-0330 | 2-25-05 | Amend | 4-1-05 | 123-065-3445 | 2-25-05 | Adopt | 4-1-05 |
| 123-065-0350 | 2-25-05 | Amend | 4-1-05 | 123-065-3460 | 2-25-05 | Amend | 4-1-05 |
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| 123-065-0400 | 2-25-05 | Am. & Ren. | 4-1-05 | 123-065-3530 | 2-25-05 | Amend | 4-1-05 |
| 123-065-0410 | 2-25-05 | Am. & Ren. | 4-1-05 | 123-065-3545 | 2-25-05 | Adopt | 4-1-05 |
| 123-065-0420 | 2-25-05 | Am. & Ren. | 4-1-05 | 123-065-3560 | 2-25-05 | Amend | 4-1-05 |
| 123-065-0430 | 2-25-05 | Am. & Ren. | 4-1-05 | 123-065-3600 | 2-25-05 | Amend | 4-1-05 |
| 123-065-0440 | 2-25-05 | Am. & Ren. | 4-1-05 | 123-065-3800 | 2-25-05 | Amend | 4-1-05 |
| 123-065-1000 | 2-25-05 | Adopt | 4-1-05 | 123-065-3830 | 2-25-05 | Amend | 4-1-05 |
| 123-065-1050 | 2-25-05 | Adopt | 4-1-05 | 123-065-3850 | 2-25-05 | Amend | 4-1-05 |
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| 123-065-1520 | 2-25-05 | Amend | 4-1-05 | 123-065-4020 | 2-25-05 | Amend | 4-1-05 |
| 123-065-1530 | 2-25-05 | Amend | 4-1-05 | 123-065-4050 | 2-25-05 | Amend | 4-1-05 |
| 123-065-1540 | 2-25-05 | Amend | 4-1-05 | 123-065-4060 | 2-25-05 | Amend | 4-1-05 |
| 123-065-1550 | 2-25-05 | Amend | 4-1-05 | 123-065-4070 | 2-25-05 | Amend | 4-1-05 |
| 123-065-1553 | 2-25-05 | Adopt | 4-1-05 | 123-065-4100 | 2-25-05 | Amend | 4-1-05 |
| 123-065-1557 | 2-25-05 | Adopt | 4-1-05 | 123-065-4110 | 2-25-05 | Amend | 4-1-05 |
| 123-065-1560 | 2-25-05 | Amend | 4-1-05 | 123-065-4120 | 2-25-05 | Amend | 4-1-05 |
| 123-065-1570 | 2-25-05 | Amend | 4-1-05 | 123-065-4130 | 2-25-05 | Amend | 4-1-05 |
| 123-065-1580 | 2-25-05 | Amend | 4-1-05 | 123-065-4140 | 2-25-05 | Amend | 4-1-05 |
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| 123-065-1620 | 2-25-05 | Amend | 4-1-05 | 123-065-4220 | 2-25-05 | Amend | 4-1-05 |
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| 123-065-1700 | 2-25-05 | Amend | 4-1-05 | 123-065-4250 | 2-25-05 | Amend | 4-1-05 |
| 123-065-1710 | 2-25-05 | Amend | 4-1-05 | 123-065-4260 | 2-25-05 | Amend | 4-1-05 |
| 123-065-1720 | 2-25-05 | Amend | 4-1-05 | 123-065-4270 | 2-25-05 | Amend | 4-1-05 |

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| 123-065-4320 | 2-25-05 | Amend | 4-1-05 | 123-065-7700 | 2-25-05 | Amend | 4-1-05 |
| 123-065-4323 | 2-25-05 | Adopt | 4-1-05 | 123-065-8000 | 2-25-05 | Adopt | 4-1-05 |
| 123-065-4325 | 2-25-05 | Adopt | 4-1-05 | 123-065-8100 | 2-25-05 | Adopt | 4-1-05 |
| 123-065-4328 | 2-25-05 | Adopt | 4-1-05 | 123-065-8200 | 2-25-05 | Adopt | 4-1-05 |
| 123-065-4330 | 2-25-05 | Amend | 4-1-05 | 123-065-8300 | 2-25-05 | Adopt | 4-1-05 |
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| 123-065-4380 | 2-25-05 | Amend | 4-1-05 | 123-070-1700 | 2-25-05 | Amend | 4-1-05 |
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| 123-065-4730 | 2-25-05 | Amend | 4-1-05 | 125-020-0410 | 3-1-05 | Repeal | 3-1-05 |
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| 123-065-4750 | 2-25-05 | Amend | 4-1-05 | 125-020-0440 | 3-1-05 | Repeal | 3-1-05 |
| 123-065-4760 | 2-25-05 | Amend | 4-1-05 | 125-020-0500 | 3-1-05 | Repeal | 3-1-05 |
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| 125-030-0100 | 3-1-05 | Repeal | 3-1-05 | 125-246-0110 | 3-1-05 | Adopt | 1-1-05 |
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| 125-031-0005 | 3-1-05 | Repeal | 3-1-05 | 125-246-0130 | 3-1-05 | Adopt | 1-1-05 |
| 125-031-0006 | 3-1-05 | Repeal | 3-1-05 | 125-246-0140 | 3-1-05 | Adopt | 1-1-05 |
| 125-031-0010 | 3-1-05 | Repeal | 3-1-05 | 125-246-0150 | 3-1-05 | Adopt | 1-1-05 |
| 125-050-0000 | 3-1-05 | Repeal | 3-1-05 | 125-246-0170 | 3-1-05 | Adopt | 1-1-05 |
| 125-050-0020 | 3-1-05 | Repeal | 3-1-05 | 125-246-0200 | 3-1-05 | Adopt | 1-1-05 |
| 125-050-0040 | 3-1-05 | Repeal | 3-1-05 | 125-246-0210 | 3-1-05 | Adopt | 1-1-05 |
| 125-050-0060 | 3-1-05 | Repeal | 3-1-05 | 125-246-0220 | 3-1-05 | Adopt | 1-1-05 |
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| 125-055-0015 | 12-28-04 | Amend(T) | 2-1-05 | 125-246-0320 | 3-1-05 | Adopt | 1-1-05 |
| 125-055-0020 | 12-28-04 | Amend(T) | 2-1-05 | 125-246-0321 | 3-1-05 | Adopt | 1-1-05 |
| 125-055-0025 | 12-28-04 | Amend(T) | 2-1-05 | 125-246-0322 | 3-1-05 | Adopt | 1-1-05 |
| 125-055-0030 | 12-28-04 | Amend(T) | 2-1-05 | 125-246-0323 | 3-1-05 | Adopt | 1-1-05 |
| 125-055-0035 | 12-28-04 | Amend(T) | 2-1-05 | 125-246-0324 | 3-1-05 | Adopt | 1-1-05 |
| 125-055-0040 | 12-28-04 | Amend(T) | 2-1-05 | 125-246-0330 | 3-1-05 | Adopt | 1-1-05 |
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| 125-145-0010 | 12-1-04 | Adopt(T) | 1-1-05 | 125-246-0345 | 3-1-05 | Adopt | 1-1-05 |
| 125-145-0010 | 2-24-05 | Amend(T) | 4-1-05 | 125-246-0350 | 3-1-05 | Adopt | 1-1-05 |
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| 125-246-0420 | 3-1-05 | Adopt | 1-1-05 | 125-247-0450 | 3-1-05 | Adopt | 1-1-05 |
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| 125-246-0440 | 3-1-05 | Adopt | 1-1-05 | 125-247-0470 | 3-1-05 | Adopt | 1-1-05 |
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| 125-246-0500 | 3-1-05 | Adopt | 1-1-05 | 125-247-0525 | 3-1-05 | Adopt | 1-1-05 |
| 125-246-0550 | 3-1-05 | Adopt | 1-1-05 | 125-247-0550 | 3-1-05 | Adopt | 1-1-05 |
| 125-246-0555 | 3-1-05 | Adopt | 1-1-05 | 125-247-0575 | 3-1-05 | Adopt | 1-1-05 |
| 125-246-0560 | 3-1-05 | Adopt | 1-1-05 | 125-247-0600 | 3-1-05 | Adopt | 1-1-05 |
| 125-246-0570 | 3-1-05 | Adopt | 1-1-05 | 125-247-0610 | 3-1-05 | Adopt | 1-1-05 |
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| 125-246-0600 | 3-1-05 | Adopt | 1-1-05 | 125-247-0640 | 3-1-05 | Adopt | 1-1-05 |
| 125-246-0605 | 3-1-05 | Adopt | 1-1-05 | 125-247-0650 | 3-1-05 | Adopt | 1-1-05 |
| 125-246-0610 | 3-1-05 | Adopt | 1-1-05 | 125-247-0660 | 3-1-05 | Adopt | 1-1-05 |
| 125-246-0615 | 3-1-05 | Adopt | 1-1-05 | 125-247-0670 | 3-1-05 | Adopt | 1-1-05 |
| 125-246-0620 | 3-1-05 | Adopt | 1-1-05 | 125-247-0700 | 3-1-05 | Adopt | 1-1-05 |
| 125-246-0625 | 3-1-05 | Adopt | 1-1-05 | 125-247-0710 | 3-1-05 | Adopt | 1-1-05 |
| 125-246-0630 | 3-1-05 | Adopt | 1-1-05 | 125-247-0720 | 3-1-05 | Adopt | 1-1-05 |
| 125-246-0635 | 3-1-05 | Adopt | 1-1-05 | 125-247-0730 | 3-1-05 | Adopt | 1-1-05 |
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| 125-246-0720 | 3-1-05 | Adopt | 1-1-05 | 125-247-0760 | 3-1-05 | Adopt | 1-1-05 |
| 125-246-0730 | 3-1-05 | Adopt | 1-1-05 | 125-247-0770 | 3-1-05 | Adopt | 1-1-05 |
| 125-246-0800 | 3-1-05 | Adopt | 1-1-05 | 125-247-0800 | 3-1-05 | Adopt | 1-1-05 |
| 125-246-0900 | 3-1-05 | Adopt | 1-1-05 | 125-248-0100 | 3-1-05 | Adopt | 1-1-05 |
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| 125-247-0010 | 3-1-05 | Adopt | 1-1-05 | 125-248-0120 | 3-1-05 | Adopt | 1-1-05 |
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| 125-247-0255 | 3-1-05 | Adopt | 1-1-05 | 125-248-0230 | 3-1-05 | Adopt | 1-1-05 |
| 125-247-0256 | 3-1-05 | Adopt | 1-1-05 | 125-248-0240 | 3-1-05 | Adopt | 1-1-05 |
| 125-247-0260 | 3-1-05 | Adopt | 1-1-05 | 125-248-0250 | 3-1-05 | Adopt | 1-1-05 |
| 125-247-0261 | 3-1-05 | Adopt | 1-1-05 | 125-248-0260 | 3-1-05 | Adopt | 1-1-05 |
| 125-247-0265 | 3-1-05 | Adopt | 1-1-05 | 125-248-0300 | 3-1-05 | Adopt | 1-1-05 |
| 125-247-0270 | 3-1-05 | Adopt | 1-1-05 | 125-248-0310 | 3-1-05 | Adopt | 1-1-05 |
| 125-247-0275 | 3-1-05 | Adopt | 1-1-05 | 125-248-0330 | 3-1-05 | Adopt | 1-1-05 |
| 125-247-0280 | 3-1-05 | Adopt | 1-1-05 | 125-248-0340 | 3-1-05 | Adopt | 1-1-05 |
| 125-247-0285 | 3-1-05 | Adopt | 1-1-05 | 125-249-0100 | 3-1-05 | Adopt | 1-1-05 |
| 125-247-0286 | 3-1-05 | Adopt | 1-1-05 | 125-249-0110 | 3-1-05 | Adopt | 1-1-05 |
| 125-247-0287 | 3-1-05 | Adopt | 1-1-05 | 125-249-0120 | 3-1-05 | Adopt | 1-1-05 |
| 125-247-0288 | 3-1-05 | Adopt | 1-1-05 | 125-249-0130 | 3-1-05 | Adopt | 1-1-05 |
| 125-247-0296 | 3-1-05 | Adopt | 1-1-05 | 125-249-0140 | 3-1-05 | Adopt | 1-1-05 |
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| 125-249-0310 | 3-1-05 | Adopt | 1-1-05 | 125-310-0220 | 3-1-05 | Repeal | 3-1-05 |
| 125-249-0320 | 3-1-05 | Adopt | 1-1-05 | 125-310-0300 | 3-1-05 | Repeal | 3-1-05 |
| 125-249-0330 | 3-1-05 | Adopt | 1-1-05 | 125-310-0400 | 3-1-05 | Repeal | 3-1-05 |
| 125-249-0340 | 3-1-05 | Adopt | 1-1-05 | 125-310-0500 | 3-1-05 | Repeal | 3-1-05 |
| 125-249-0350 | 3-1-05 | Adopt | 1-1-05 | 125-320-0010 | 3-1-05 | Repeal | 3-1-05 |
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| 125-249-0380 | 3-1-05 | Adopt | 1-1-05 | 125-330-0030 | 3-1-05 | Repeal | 3-1-05 |
| 125-249-0390 | 3-1-05 | Adopt | 1-1-05 | 125-330-0140 | 3-1-05 | Repeal | 3-1-05 |
| 125-249-0400 | 3-1-05 | Adopt | 1-1-05 | 125-330-0200 | 3-1-05 | Repeal | 3-1-05 |
| 125-249-0410 | 3-1-05 | Adopt | 1-1-05 | 125-330-0260 | 3-1-05 | Repeal | 3-1-05 |
| 125-249-0420 | 3-1-05 | Adopt | 1-1-05 | 125-330-0330 | 3-1-05 | Repeal | 3-1-05 |
| 125-249-0430 | 3-1-05 | Adopt | 1-1-05 | 125-330-0340 | 3-1-05 | Repeal | 3-1-05 |
| 125-249-0440 | 3-1-05 | Adopt | 1-1-05 | 125-330-0450 | 3-1-05 | Repeal | 3-1-05 |
| 125-249-0450 | 3-1-05 | Adopt | 1-1-05 | 125-330-0500 | 3-1-05 | Repeal | 3-1-05 |
| 125-249-0460 | 3-1-05 | Adopt | 1-1-05 | 125-330-0600 | 3-1-05 | Repeal | 3-1-05 |
| 125-249-0470 | 3-1-05 | Adopt | 1-1-05 | 125-330-0700 | 3-1-05 | Repeal | 3-1-05 |
| 125-249-0490 | 3-1-05 | Adopt | 1-1-05 | 125-360-0010 | 3-1-05 | Repeal | 3-1-05 |
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| 125-249-0610 | 3-1-05 | Adopt | 1-1-05 | 125-360-0030 | 3-1-05 | Repeal | 3-1-05 |
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| 125-249-0650 | 3-1-05 | Adopt | 1-1-05 | 137-055-2140 | 1-3-05 | Amend | 2-1-05 |
| 125-249-0660 | 3-1-05 | Adopt | 1-1-05 | 137-055-2165 | 1-3-05 | Adopt | 2-1-05 |
| 125-249-0670 | 3-1-05 | Adopt | 1-1-05 | 137-055-3430 | 1-3-05 | Amend | 2-1-05 |
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| 125-249-0820 | 3-1-05 | Adopt | 1-1-05 | 137-055-6240 | 1-3-05 | Amend | 2-1-05 |
| 125-249-0830 | 3-1-05 | Adopt | 1-1-05 | 137-076-0010 | 11-22-04 | Amend | 1-1-05 |
| 125-249-0840 | 3-1-05 | Adopt | 1-1-05 | 137-076-0016 | 11-22-04 | Adopt | 1-1-05 |
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| 150-285C.170 | 12-31-04 | Adopt | 2-1-05 | 167-001-0005 | 3-1-05 | Amend(T) | 4-1-05 |
| 150-29.375(2)(c) | 12-31-04 | Am. & Ren. | 2-1-05 | 167-001-0007 | 3-1-05 | Adopt(T) | 4-1-05 |
| 150-293.525(1)(b) | 12-31-04 | Adopt | 2-1-05 | 167-001-0010 | 3-1-05 | Amend(T) | 4-1-05 |
| 150-305.220(1) | 12-31-04 | Amend | 2-1-05 | 167-001-0020 | 3-1-05 | Amend(T) | 4-1-05 |
| 150-305.220(2) | 12-31-04 | Amend | 2-1-05 | 167-001-0030 | 3-1-05 | Amend(T) | 4-1-05 |
| 150-307.262(2) | 12-31-04 | Adopt | 2-1-05 | 167-001-0065 | 3-1-05 | Adopt(T) | 4-1-05 |
| 150-308.010-(A) | 12-31-04 | Am. & Ren. | 2-1-05 | 167-001-0070 | 3-1-05 | Amend(T) | 4-1-05 |
| 150-308.010-(B) | 12-31-04 | Repeal | 2-1-05 | 167-001-0081 | 3-1-05 | Adopt(T) | 4-1-05 |
| 150-308.010-(C) | 12-31-04 | Repeal | 2-1-05 | 167-001-0085 | 3-1-05 | Adopt(T) | 4-1-05 |
| 150-308.205-(A) | 12-31-04 | Amend | 2-1-05 | 167-001-0300 | 3-1-05 | Adopt(T) | 4-1-05 |
| 150-308.205-(D) | 12-31-04 | Amend | 2-1-05 | 167-001-0360 | 3-1-05 | Adopt(T) | 4-1-05 |
| 150-308A.718 | 12-31-04 | Amend | 2-1-05 | 167-001-0600 | 3-1-05 | Adopt(T) | 4-1-05 |
| 150-309.024 | 12-31-04 | Amend | 2-1-05 | 167-001-0605 | 3-1-05 | Adopt(T) | 4-1-05 |
| 150-309.100(2)-(B) | 12-31-04 | Amend | 2-1-05 | 167-001-0620 | 3-1-05 | Adopt(T) | 4-1-05 |
| 150-309.100(3)-(B) | 12-31-04 | Amend | 2-1-05 | 167-001-0625 | 3-1-05 | Adopt(T) | 4-1-05 |
| 150-309.100(5) | 12-31-04 | Adopt | 2-1-05 | 167-001-0630 | 3-1-05 | Adopt(T) | 4-1-05 |
| 150-309.110(1) | 12-31-04 | Amend | 2-1-05 | 167-001-0635 | 3-1-05 | Adopt(T) | 4-1-05 |
| 150-309.110(1)-(A) | 12-31-04 | Amend | 2-1-05 | 170-060-1010 | 11-18-04 | Amend | 1-1-05 |
| 150-311.688 | 12-31-04 | Adopt | 2-1-05 | | | | |
| 150-311.690(4) | 12-31-04 | Amend | 2-1-05 | | | | |

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| 250-015-0011 | 1-24-05 | Adopt | 3-1-05 | 291-180-0145 | 2-24-05 | Adopt | 4-1-05 |
| 250-015-0016 | 1-24-05 | Amend | 3-1-05 | 291-180-0155 | 2-24-05 | Adopt | 4-1-05 |
| 250-015-0019 | 1-24-05 | Amend | 3-1-05 | 291-180-0165 | 2-24-05 | Adopt | 4-1-05 |
| 250-015-0024 | 1-24-05 | Amend | 3-1-05 | 291-180-0175 | 2-24-05 | Adopt | 4-1-05 |
| 250-015-0025 | 1-24-05 | Adopt | 3-1-05 | 291-180-0185 | 2-24-05 | Adopt | 4-1-05 |
| 250-015-0026 | 1-24-05 | Adopt | 3-1-05 | 291-180-0195 | 2-24-05 | Adopt | 4-1-05 |
| 250-015-0027 | 1-24-05 | Adopt | 3-1-05 | 291-180-0205 | 2-24-05 | Adopt | 4-1-05 |
| 250-015-0028 | 1-24-05 | Adopt | 3-1-05 | 291-180-0215 | 2-24-05 | Adopt | 4-1-05 |
| 250-015-0029 | 1-24-05 | Adopt | 3-1-05 | 291-180-0225 | 2-24-05 | Adopt | 4-1-05 |
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| 250-015-0033 | 1-24-05 | Adopt | 3-1-05 | 291-180-0265 | 2-24-05 | Adopt | 4-1-05 |
| 250-020-0280 | 1-20-05 | Amend | 3-1-05 | 291-180-0275 | 2-24-05 | Adopt | 4-1-05 |
| 250-025-0020 | 12-7-04 | Amend(T) | 1-1-05 | 291-180-0285 | 2-24-05 | Adopt | 4-1-05 |
| 250-025-0020(T) | 12-7-04 | Suspend | 1-1-05 | 291-180-0295 | 2-24-05 | Adopt | 4-1-05 |
| 257-010-0025 | 3-1-05 | Amend(T) | 4-1-05 | 291-180-0305 | 2-24-05 | Adopt | 4-1-05 |
| 257-010-0035 | 3-1-05 | Amend(T) | 4-1-05 | 291-180-0315 | 2-24-05 | Adopt | 4-1-05 |
| 259-009-0060 | 1-28-05 | Adopt(T) | 3-1-05 | 291-180-0325 | 2-24-05 | Adopt | 4-1-05 |
| 291-082-0010 | 1-7-05 | Amend(T) | 2-1-05 | 291-180-0335 | 2-24-05 | Adopt | 4-1-05 |
| 291-082-0020 | 1-7-05 | Amend(T) | 2-1-05 | 291-180-0345 | 2-24-05 | Adopt | 4-1-05 |
| 291-082-0030 | 1-7-05 | Amend(T) | 2-1-05 | 291-180-0355 | 2-24-05 | Adopt | 4-1-05 |
| 291-082-0031 | 1-7-05 | Adopt(T) | 2-1-05 | 291-180-0365 | 2-24-05 | Adopt | 4-1-05 |
| 291-082-0032 | 1-7-05 | Adopt(T) | 2-1-05 | 291-180-0375 | 2-24-05 | Adopt | 4-1-05 |
| 291-082-0033 | 1-7-05 | Adopt(T) | 2-1-05 | 291-180-0385 | 2-24-05 | Adopt | 4-1-05 |
| 291-127-0200 | 3-14-05 | Amend | 4-1-05 | 291-180-0395 | 2-24-05 | Adopt | 4-1-05 |
| 291-127-0210 | 3-14-05 | Amend | 4-1-05 | 291-180-0405 | 2-24-05 | Adopt | 4-1-05 |
| 291-127-0220 | 3-14-05 | Amend | 4-1-05 | 291-180-0415 | 2-24-05 | Adopt | 4-1-05 |
| 291-127-0230 | 3-14-05 | Amend | 4-1-05 | 291-180-0425 | 2-24-05 | Adopt | 4-1-05 |
| 291-127-0240 | 3-14-05 | Amend | 4-1-05 | 291-180-0435 | 2-24-05 | Adopt | 4-1-05 |
| 291-127-0250 | 3-14-05 | Amend | 4-1-05 | 291-180-0445 | 2-24-05 | Adopt | 4-1-05 |
| 291-127-0260 | 3-14-05 | Amend | 4-1-05 | 291-180-0455 | 2-24-05 | Adopt | 4-1-05 |
| 291-127-0270 | 3-14-05 | Repeal | 4-1-05 | 291-180-0465 | 2-24-05 | Adopt | 4-1-05 |
| 291-127-0280 | 3-14-05 | Amend | 4-1-05 | 291-180-0475 | 2-24-05 | Adopt | 4-1-05 |
| 291-127-0285 | 3-14-05 | Adopt | 4-1-05 | 291-180-0485 | 2-24-05 | Adopt | 4-1-05 |
| 291-127-0290 | 3-14-05 | Amend | 4-1-05 | 291-180-0495 | 2-24-05 | Adopt | 4-1-05 |
| 291-127-0300 | 3-14-05 | Amend | 4-1-05 | 291-180-0505 | 2-24-05 | Adopt | 4-1-05 |
| 291-127-0310 | 3-14-05 | Amend | 4-1-05 | 291-180-0515 | 2-24-05 | Adopt | 4-1-05 |
| 291-127-0320 | 3-14-05 | Amend | 4-1-05 | 291-180-0525 | 2-24-05 | Adopt | 4-1-05 |
| 291-127-0330 | 3-14-05 | Amend | 4-1-05 | 291-180-0535 | 2-24-05 | Adopt | 4-1-05 |
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| 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 |
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| 309-032-1280 | 1-3-05 | Adopt(T) | 2-1-05 | 333-004-0060 | 2-18-05 | Adopt | 4-1-05 |
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| 309-032-1290 | 1-3-05 | Adopt(T) | 2-1-05 | 333-004-0080 | 2-18-05 | Adopt | 4-1-05 |
| 309-032-1295 | 1-3-05 | Adopt(T) | 2-1-05 | 333-004-0090 | 2-18-05 | Adopt | 4-1-05 |
| 309-032-1300 | 1-3-05 | Adopt(T) | 2-1-05 | 333-004-0100 | 2-18-05 | Adopt | 4-1-05 |
| 309-032-1305 | 1-3-05 | Adopt(T) | 2-1-05 | 333-004-0110 | 2-18-05 | Adopt | 4-1-05 |
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| 330-105-0035 | 12-20-04 | Amend | 2-1-05 | 333-024-0235(T) | 12-7-04 | Repeal | 1-1-05 |
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| 330-110-0016 | 12-20-04 | Amend | 2-1-05 | 333-029-0050 | 1-14-05 | Amend | 2-1-05 |
| 330-110-0020 | 12-20-04 | Amend | 2-1-05 | 333-029-0075 | 1-14-05 | Amend | 2-1-05 |
| 330-110-0025 | 12-20-04 | Amend | 2-1-05 | 333-030-0015 | 1-14-05 | Amend | 2-1-05 |
| 330-110-0030 | 12-20-04 | Amend | 2-1-05 | 333-030-0040 | 1-14-05 | Amend | 2-1-05 |
| 330-110-0035 | 12-20-04 | Amend | 2-1-05 | 333-030-0045 | 1-14-05 | Amend | 2-1-05 |
| 330-110-0036 | 12-20-04 | Amend | 2-1-05 | 333-030-0050 | 1-14-05 | Amend | 2-1-05 |
| 330-110-0040 | 12-20-04 | Amend | 2-1-05 | 333-030-0080 | 1-14-05 | Amend | 2-1-05 |
| 330-110-0042 | 12-20-04 | Amend | 2-1-05 | 333-030-0085 | 1-14-05 | Amend | 2-1-05 |
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| 333-050-0080(T) | 2-3-05 | Repeal | 3-1-05 | 333-102-0110 | 12-1-04 | Amend | 1-1-05 |
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| 333-100-0065 | 12-1-04 | Amend | 1-1-05 | 333-102-0235(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-100-0065(T) | 12-1-04 | Repeal | 1-1-05 | 333-102-0240 | 12-1-04 | Repeal | 1-1-05 |
| 333-100-0070 | 12-1-04 | Amend | 1-1-05 | 333-102-0245 | 12-1-04 | Amend | 1-1-05 |
| 333-100-0070(T) | 12-1-04 | Repeal | 1-1-05 | 333-102-0245(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-100-0080 | 12-1-04 | Adopt | 1-1-05 | 333-102-0247 | 12-1-04 | Adopt | 1-1-05 |
| 333-100-0080(T) | 12-1-04 | Repeal | 1-1-05 | 333-102-0247(T) | 12-1-04 | Repeal | 1-1-05 |
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| 333-101-0001(T) | 12-1-04 | Repeal | 1-1-05 | 333-102-0250(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-101-0003 | 12-1-04 | Adopt | 1-1-05 | 333-102-0255 | 12-1-04 | Amend | 1-1-05 |
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| 333-101-0010 | 12-1-04 | Amend | 1-1-05 | 333-102-0260 | 12-1-04 | Amend | 1-1-05 |
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| 333-102-0001 | 12-1-04 | Amend | 1-1-05 | 333-102-0265 | 12-1-04 | Amend | 1-1-05 |
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| 333-102-0005 | 12-1-04 | Amend | 1-1-05 | 333-102-0270 | 12-1-04 | Amend | 1-1-05 |
| 333-102-0005(T) | 12-1-04 | Repeal | 1-1-05 | 333-102-0270(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-102-0010 | 12-1-04 | Amend | 1-1-05 | 333-102-0275 | 12-1-04 | Amend | 1-1-05 |
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| 333-102-0295 | 12-1-04 | Repeal | 1-1-05 | 333-105-0330 | 12-1-04 | Repeal | 1-1-05 |
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| 333-102-0315 | 12-1-04 | Amend | 1-1-05 | 333-105-0440(T) | 12-1-04 | Repeal | 1-1-05 |
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| 333-102-0327 | 12-1-04 | Amend | 1-1-05 | 333-105-0450(T) | 12-1-04 | Repeal | 1-1-05 |
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| 333-102-0330 | 12-1-04 | Amend | 1-1-05 | 333-105-0460(T) | 12-1-04 | Repeal | 1-1-05 |
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| 333-102-0335 | 12-1-04 | Amend | 1-1-05 | 333-105-0470(T) | 12-1-04 | Repeal | 1-1-05 |
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| 333-102-0365 | 12-1-04 | Adopt | 1-1-05 | 333-105-0520(T) | 12-1-04 | Repeal | 1-1-05 |
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| 333-105-0140 | 12-1-04 | Repeal | 1-1-05 | 333-105-0630(T) | 12-1-04 | Repeal | 1-1-05 |
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| 333-105-0760 | 12-1-04 | Adopt | 1-1-05 | 333-116-0090 | 12-1-04 | Amend | 1-1-05 |
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| 333-106-0105 | 12-1-04 | Amend | 1-1-05 | 333-116-0140 | 12-1-04 | Amend | 1-1-05 |
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| 333-116-0430(T) | 12-1-04 | Repeal | 1-1-05 | 333-116-0720 | 12-1-04 | Amend | 1-1-05 |
| 333-116-0440 | 12-1-04 | Amend | 1-1-05 | 333-116-0720(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0440(T) | 12-1-04 | Repeal | 1-1-05 | 333-116-0730 | 12-1-04 | Amend | 1-1-05 |
| 333-116-0450 | 12-1-04 | Amend | 1-1-05 | 333-116-0730(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0450(T) | 12-1-04 | Repeal | 1-1-05 | 333-116-0830 | 12-1-04 | Amend | 1-1-05 |
| 333-116-0460 | 12-1-04 | Amend | 1-1-05 | 333-116-0830(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0460(T) | 12-1-04 | Repeal | 1-1-05 | 333-116-0905 | 12-1-04 | Adopt | 1-1-05 |
| 333-116-0470 | 12-1-04 | Amend | 1-1-05 | 333-116-0905(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0470(T) | 12-1-04 | Repeal | 1-1-05 | 333-116-0910 | 12-1-04 | Adopt | 1-1-05 |
| 333-116-0480 | 12-1-04 | Amend | 1-1-05 | 333-116-0910(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0480(T) | 12-1-04 | Repeal | 1-1-05 | 333-116-0915 | 12-1-04 | Adopt | 1-1-05 |
| 333-116-0490 | 12-1-04 | Amend | 1-1-05 | 333-116-0915(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0490(T) | 12-1-04 | Repeal | 1-1-05 | 333-118-0020 | 12-1-04 | Amend | 1-1-05 |
| 333-116-0495 | 12-1-04 | Adopt | 1-1-05 | 333-118-0020(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0495(T) | 12-1-04 | Repeal | 1-1-05 | 333-118-0040 | 12-1-04 | Amend | 1-1-05 |
| 333-116-0510 | 12-1-04 | Repeal | 1-1-05 | 333-118-0040(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0515 | 12-1-04 | Adopt | 1-1-05 | 333-118-0050 | 12-1-04 | Amend | 1-1-05 |
| 333-116-0515(T) | 12-1-04 | Repeal | 1-1-05 | 333-118-0050(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0525 | 12-1-04 | Adopt | 1-1-05 | 333-118-0060 | 12-1-04 | Amend | 1-1-05 |
| 333-116-0525(T) | 12-1-04 | Repeal | 1-1-05 | 333-118-0060(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0530 | 12-1-04 | Amend | 1-1-05 | 333-118-0070 | 12-1-04 | Amend | 1-1-05 |
| 333-116-0530(T) | 12-1-04 | Repeal | 1-1-05 | 333-118-0070(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0540 | 12-1-04 | Amend | 1-1-05 | 333-118-0080 | 12-1-04 | Amend | 1-1-05 |
| 333-116-0540(T) | 12-1-04 | Repeal | 1-1-05 | 333-118-0080(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0560 | 12-1-04 | Amend | 1-1-05 | 333-118-0090 | 12-1-04 | Amend | 1-1-05 |
| 333-116-0560(T) | 12-1-04 | Repeal | 1-1-05 | 333-118-0090(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0570 | 12-1-04 | Amend | 1-1-05 | 333-118-0100 | 12-1-04 | Amend | 1-1-05 |
| 333-116-0570(T) | 12-1-04 | Repeal | 1-1-05 | 333-118-0100(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0573 | 12-1-04 | Adopt | 1-1-05 | 333-118-0110 | 12-1-04 | Amend | 1-1-05 |
| 333-116-0573(T) | 12-1-04 | Repeal | 1-1-05 | 333-118-0110(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0577 | 12-1-04 | Adopt | 1-1-05 | 333-118-0120 | 12-1-04 | Amend | 1-1-05 |
| 333-116-0577(T) | 12-1-04 | Repeal | 1-1-05 | 333-118-0120(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-116-0580 | 12-1-04 | Amend | 1-1-05 | 333-118-0130 | 12-1-04 | Amend | 1-1-05 |

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| 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 |
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| 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 |
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| 333-119-0030 | 12-1-04 | Amend | 1-1-05 | 333-120-0540 | 12-1-04 | Amend | 1-1-05 |
| 333-119-0030(T) | 12-1-04 | Repeal | 1-1-05 | 333-120-0540(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-119-0040 | 12-1-04 | Amend | 1-1-05 | 333-120-0550 | 12-1-04 | Amend | 1-1-05 |
| 333-119-0040(T) | 12-1-04 | Repeal | 1-1-05 | 333-120-0550(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-119-0080 | 12-1-04 | Amend | 1-1-05 | 333-120-0560 | 12-1-04 | Amend | 1-1-05 |
| 333-119-0080(T) | 12-1-04 | Repeal | 1-1-05 | 333-120-0560(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-119-0090 | 12-1-04 | Amend | 1-1-05 | 333-120-0600 | 12-1-04 | Amend | 1-1-05 |
| 333-119-0090(T) | 12-1-04 | Repeal | 1-1-05 | 333-120-0600(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-119-0100 | 12-1-04 | Amend | 1-1-05 | 333-120-0610 | 12-1-04 | Amend | 1-1-05 |
| 333-119-0100(T) | 12-1-04 | Repeal | 1-1-05 | 333-120-0610(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-119-0120 | 12-1-04 | Amend | 1-1-05 | 333-120-0640 | 12-1-04 | Amend | 1-1-05 |
| 333-119-0120(T) | 12-1-04 | Repeal | 1-1-05 | 333-120-0640(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-120-0015 | 12-1-04 | Adopt | 1-1-05 | 333-120-0650 | 12-1-04 | Amend | 1-1-05 |
| 333-120-0015(T) | 12-1-04 | Repeal | 1-1-05 | 333-120-0650(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-120-0017 | 12-1-04 | Adopt | 1-1-05 | 333-120-0660 | 12-1-04 | Amend | 1-1-05 |
| 333-120-0017(T) | 12-1-04 | Repeal | 1-1-05 | 333-120-0660(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-120-0100 | 12-1-04 | Amend | 1-1-05 | 333-120-0670 | 12-1-04 | Amend | 1-1-05 |
| 333-120-0100(T) | 12-1-04 | Repeal | 1-1-05 | 333-120-0670(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-120-0110 | 12-1-04 | Amend | 1-1-05 | 333-120-0680 | 12-1-04 | Amend | 1-1-05 |
| 333-120-0110(T) | 12-1-04 | Repeal | 1-1-05 | 333-120-0680(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-120-0130 | 12-1-04 | Amend | 1-1-05 | 333-120-0700 | 12-1-04 | Amend | 1-1-05 |
| 333-120-0130(T) | 12-1-04 | Repeal | 1-1-05 | 333-120-0700(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-120-0170 | 12-1-04 | Amend | 1-1-05 | 333-120-0710 | 12-1-04 | Amend | 1-1-05 |
| 333-120-0170(T) | 12-1-04 | Repeal | 1-1-05 | 333-120-0710(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-120-0180 | 12-1-04 | Amend | 1-1-05 | 333-120-0720 | 12-1-04 | Amend | 1-1-05 |
| 333-120-0180(T) | 12-1-04 | Repeal | 1-1-05 | 333-120-0720(T) | 12-1-04 | Repeal | 1-1-05 |
| 333-120-0190 | 12-1-04 | Amend | 1-1-05 | 333-150-0000 | 1-14-05 | Amend | 2-1-05 |
| 333-120-0190(T) | 12-1-04 | Repeal | 1-1-05 | 333-505-0007 | 2-4-05 | Amend | 3-1-05 |
| 333-120-0200 | 12-1-04 | Amend | 1-1-05 | 334-010-0050 | 2-23-05 | Amend | 4-1-05 |
| 333-120-0200(T) | 12-1-04 | Repeal | 1-1-05 | 340-012-0060 | 3-1-05 | Amend | 3-1-05 |
| 333-120-0210 | 12-1-04 | Amend | 1-1-05 | 340-016-0055 | 11-19-04 | Amend | 1-1-05 |
| 333-120-0210(T) | 12-1-04 | Repeal | 1-1-05 | 340-071-0100 | 3-1-05 | Amend | 2-1-05 |
| 333-120-0215 | 12-1-04 | Adopt | 1-1-05 | 340-071-0110 | 3-1-05 | Amend | 2-1-05 |
| 333-120-0215(T) | 12-1-04 | Repeal | 1-1-05 | 340-071-0115 | 3-1-05 | Amend | 2-1-05 |
| 333-120-0220 | 12-1-04 | Amend | 1-1-05 | 340-071-0116 | 3-1-05 | Am. & Ren. | 2-1-05 |
| 333-120-0220(T) | 12-1-04 | Repeal | 1-1-05 | 340-071-0117 | 3-1-05 | Am. & Ren. | 2-1-05 |
| 333-120-0230 | 12-1-04 | Amend | 1-1-05 | 340-071-0120 | 3-1-05 | Amend | 2-1-05 |
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| 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 |
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| 340-071-0210 | 3-1-05 | Amend | 2-1-05 | 340-200-0040 | 12-15-04 | Amend | 1-1-05 |
| 340-071-0215 | 3-1-05 | Amend | 2-1-05 | 340-200-0040 | 1-4-05 | Amend | 2-1-05 |
| 340-071-0220 | 3-1-05 | Amend | 2-1-05 | 340-200-0040 | 2-10-05 | Amend | 3-1-05 |
| 340-071-0260 | 3-1-05 | Amend | 2-1-05 | 340-204-0010 | 1-4-05 | Amend | 2-1-05 |
| 340-071-0265 | 3-1-05 | Amend | 2-1-05 | 340-204-0030 | 1-4-05 | Amend | 2-1-05 |
| 340-071-0270 | 3-1-05 | Amend | 2-1-05 | 340-204-0040 | 1-4-05 | Amend | 2-1-05 |
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| 340-071-0280 | 3-1-05 | Amend | 2-1-05 | 340-218-0080 | 2-10-05 | Amend | 3-1-05 |
| 340-071-0285 | 3-1-05 | Amend | 2-1-05 | 340-224-0060 | 1-4-05 | Amend | 2-1-05 |
| 340-071-0295 | 3-1-05 | Amend | 2-1-05 | 340-224-0070 | 1-4-05 | Amend | 2-1-05 |
| 340-071-0300 | 3-1-05 | Repeal | 2-1-05 | 340-225-0020 | 1-4-05 | Amend | 2-1-05 |
| 340-071-0302 | 3-1-05 | Amend | 2-1-05 | 340-225-0045 | 1-4-05 | Amend | 2-1-05 |
| 340-071-0305 | 3-1-05 | Am. & Ren. | 2-1-05 | 340-225-0090 | 1-4-05 | Amend | 2-1-05 |
| 340-071-0310 | 3-1-05 | Amend | 2-1-05 | 340-230-0030 | 2-10-05 | Amend | 3-1-05 |
| 340-071-0315 | 3-1-05 | Amend | 2-1-05 | 340-230-0410 | 2-10-05 | Amend | 3-1-05 |
| 340-071-0320 | 3-1-05 | Amend | 2-1-05 | 340-238-0040 | 2-10-05 | Amend | 3-1-05 |
| 340-071-0325 | 3-1-05 | Amend | 2-1-05 | 340-238-0060 | 2-10-05 | Amend | 3-1-05 |
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| 340-071-0335 | 3-1-05 | Amend | 2-1-05 | 340-240-0100 | 1-4-05 | Amend | 2-1-05 |
| 340-071-0340 | 3-1-05 | Amend | 2-1-05 | 340-240-0110 | 1-4-05 | Amend | 2-1-05 |
| 340-071-0345 | 3-1-05 | Amend | 2-1-05 | 340-240-0120 | 1-4-05 | Amend | 2-1-05 |
| 340-071-0360 | 3-1-05 | Amend | 2-1-05 | 340-240-0130 | 1-4-05 | Amend | 2-1-05 |
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| 340-071-0415 | 3-1-05 | Amend | 2-1-05 | 340-240-0190 | 1-4-05 | Amend | 2-1-05 |
| 340-071-0420 | 3-1-05 | Amend | 2-1-05 | 340-240-0200 | 1-4-05 | Repeal | 2-1-05 |
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| 340-071-0430 | 3-1-05 | Amend | 2-1-05 | 340-240-0220 | 1-4-05 | Amend | 2-1-05 |
| 340-071-0435 | 3-1-05 | Amend | 2-1-05 | 340-240-0230 | 1-4-05 | Amend | 2-1-05 |
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| 340-071-0460 | 3-1-05 | Amend | 2-1-05 | 340-244-0030 | 2-10-05 | Amend | 3-1-05 |
| 340-071-0500 | 3-1-05 | Amend | 2-1-05 | 340-244-0040 | 2-10-05 | Amend | 3-1-05 |
| 340-071-0520 | 3-1-05 | Amend | 2-1-05 | 340-244-0120 | 2-10-05 | Amend | 3-1-05 |
| 340-071-0600 | 3-1-05 | Amend | 2-1-05 | 340-244-0210 | 2-10-05 | Amend | 3-1-05 |
| 340-071-0650 | 3-1-05 | Adopt | 2-1-05 | 340-244-0220 | 2-10-05 | Amend | 3-1-05 |
| 340-073-0025 | 3-1-05 | Amend | 2-1-05 | 340-244-0230 | 2-10-05 | Amend | 3-1-05 |
| 340-073-0026 | 3-1-05 | Amend | 2-1-05 | 410-003-0010 | 3-1-05 | Adopt(T) | 4-1-05 |
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| 410-050-0451 | 2-1-05 | Adopt | 3-1-05 | 410-122-0375 | 4-1-05 | Amend | 4-1-05 |
| 410-050-0461 | 2-1-05 | Adopt | 3-1-05 | 410-122-0400 | 1-1-05 | Amend | 2-1-05 |
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| 410-120-1280 | 4-1-05 | Amend | 4-1-05 | 410-125-0410 | 4-1-05 | Amend | 4-1-05 |
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| 410-121-0021 | 4-1-05 | Amend | 4-1-05 | 410-130-0010 | 4-1-05 | Repeal | 4-1-05 |
| 410-121-0030 | 12-1-04 | Amend | 1-1-05 | 410-130-0020 | 4-1-05 | Repeal | 4-1-05 |
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| 410-121-0040 | 12-1-04 | Amend | 1-1-05 | 410-130-0160 | 4-1-05 | Amend | 4-1-05 |
| 410-121-0135 | 4-1-05 | Amend | 4-1-05 | 410-130-0180 | 4-1-05 | Amend | 4-1-05 |
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| 410-121-0157 | 1-14-05 | Amend(T) | 2-1-05 | 410-130-0220 | 4-1-05 | Amend | 4-1-05 |
| 410-121-0157 | 3-31-05 | Amend | 4-1-05 | 410-130-0240 | 12-1-04 | Amend | 1-1-05 |
| 410-121-0157 | 4-1-05 | Amend(T) | 4-1-05 | 410-130-0240 | 4-1-05 | Amend | 4-1-05 |
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| 410-121-0190 | 4-1-05 | Amend | 4-1-05 | 410-130-0610 | 4-1-05 | Adopt | 4-1-05 |
| 410-121-0300 | 12-10-04 | Amend(T) | 1-1-05 | 410-130-0680 | 4-1-05 | Amend | 4-1-05 |
| 410-121-0300 | 2-1-05 | Amend | 3-1-05 | 410-130-0700 | 4-1-05 | Amend | 4-1-05 |
| 410-121-0320 | 1-1-05 | Amend | 2-1-05 | 410-131-0120 | 4-1-05 | Amend | 4-1-05 |
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| 410-122-0190 | 1-1-05 | Amend | 2-1-05 | 410-147-0365 | 3-18-05 | Adopt(T) | 4-1-05 |
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| 410-122-0202 | 1-1-05 | Amend | 2-1-05 | 411-002-0175 | 12-30-04 | Adopt | 2-1-05 |
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| 410-122-0204 | 1-1-05 | Amend | 2-1-05 | 411-027-0000 | 1-5-05 | Amend | 2-1-05 |
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| 410-122-0207 | 1-1-05 | Amend | 2-1-05 | 411-031-0040 | 1-1-05 | Amend(T) | 2-1-05 |
| 410-122-0208 | 1-1-05 | Amend | 2-1-05 | 411-031-0050 | 1-1-05 | Amend(T) | 2-1-05 |
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| 410-122-0209 | 4-1-05 | Amend | 4-1-05 | 411-034-0010 | 12-1-04 | Amend | 1-1-05 |
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| 411-045-0120 | 1-4-05 | Amend | 2-1-05 | 411-360-0060 | 2-1-05 | Adopt | 2-1-05 |
| 411-045-0130 | 1-4-05 | Amend | 2-1-05 | 411-360-0070 | 2-1-05 | Adopt | 2-1-05 |
| 411-045-0140 | 1-4-05 | Amend | 2-1-05 | 411-360-0080 | 2-1-05 | Adopt | 2-1-05 |
| 411-070-0359 | 12-28-04 | Amend | 2-1-05 | 411-360-0090 | 2-1-05 | Adopt | 2-1-05 |
| 411-070-0428 | 12-28-04 | Amend | 2-1-05 | 411-360-0100 | 2-1-05 | Adopt | 2-1-05 |
| 411-070-0440 | 12-28-04 | Repeal | 2-1-05 | 411-360-0110 | 2-1-05 | Adopt | 2-1-05 |
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| 459-005-0370 | 1-31-05 | Amend | 3-1-05 | 461-115-0140 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0506 | 12-15-04 | Amend(T) | 1-1-05 | 461-115-0190 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0506 | 2-22-05 | Amend | 4-1-05 | 461-115-0530 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0506(T) | 2-22-05 | Repeal | 4-1-05 | 461-115-0651 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0525 | 12-15-04 | Amend(T) | 1-1-05 | 461-135-0400 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0525 | 2-22-05 | Amend | 4-1-05 | 461-135-0405 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0525(T) | 2-22-05 | Repeal | 4-1-05 | 461-135-0510 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0535 | 12-15-04 | Amend(T) | 1-1-05 | 461-135-0780 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0535 | 2-22-05 | Amend | 4-1-05 | 461-135-0832 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0535(T) | 2-22-05 | Repeal | 4-1-05 | 461-140-0040 | 2-1-05 | Amend(T) | 3-1-05 |
| 459-005-0545 | 12-15-04 | Amend(T) | 1-1-05 | 461-140-0110 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0545 | 2-22-05 | Amend | 4-1-05 | 461-140-0120 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0545(T) | 2-22-05 | Repeal | 4-1-05 | 461-145-0130 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0560 | 12-15-04 | Amend(T) | 1-1-05 | 461-145-0240 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0560 | 2-22-05 | Amend | 4-1-05 | 461-145-0320 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0560(T) | 2-22-05 | Repeal | 4-1-05 | 461-145-0330 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0590 | 12-15-04 | Amend(T) | 1-1-05 | 461-145-0910 | 2-1-05 | Amend(T) | 3-1-05 |
| 459-005-0590 | 2-22-05 | Amend | 4-1-05 | 461-145-0920 | 2-1-05 | Amend(T) | 3-1-05 |
| 459-005-0590(T) | 2-22-05 | Repeal | 4-1-05 | 461-150-0050 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0591 | 12-15-04 | Amend(T) | 1-1-05 | 461-155-0020 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0591 | 1-31-05 | Amend | 3-1-05 | 461-155-0225 | 2-18-05 | Amend | 4-1-05 |
| 459-005-0591 | 2-22-05 | Amend | 4-1-05 | 461-155-0235 | 2-18-05 | Amend | 4-1-05 |
| 459-005-0591(T) | 2-22-05 | Repeal | 4-1-05 | 461-155-0250 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0595 | 12-15-04 | Amend(T) | 1-1-05 | 461-155-0270 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0595 | 2-22-05 | Amend | 4-1-05 | 461-155-0300 | 1-1-05 | Amend | 2-1-05 |
| 459-005-0595(T) | 2-22-05 | Repeal | 4-1-05 | 461-160-0030 | 1-1-05 | Amend | 2-1-05 |
| 459-007-0220 | 3-15-05 | Amend | 1-1-05 | 461-160-0055 | 1-1-05 | Amend | 2-1-05 |
| 459-007-0230 | 3-15-05 | Amend | 1-1-05 | 461-160-0550 | 1-1-05 | Amend | 2-1-05 |

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| 461-165-0100 | 1-1-05 | Amend | 2-1-05 | 584-060-0171 | 1-21-05 | Amend | 3-1-05 |
| 461-170-0010 | 1-1-05 | Amend | 2-1-05 | 584-060-0210 | 1-21-05 | Amend | 3-1-05 |
| 461-170-0100 | 1-1-05 | Amend | 2-1-05 | 584-070-0111 | 1-21-05 | Amend | 3-1-05 |
| 461-170-0101 | 1-1-05 | Amend | 2-1-05 | 584-080-0171 | 1-21-05 | Adopt | 3-1-05 |
| 461-170-0130 | 1-1-05 | Adopt | 2-1-05 | 584-100-0071 | 1-21-05 | Amend | 3-1-05 |
| 461-175-0210 | 1-1-05 | Amend | 2-1-05 | 585-001-0000 | 2-11-05 | Amend | 3-1-05 |
| 461-175-0300 | 3-2-05 | Amend(T) | 4-1-05 | 585-010-0115 | 2-11-05 | Amend | 3-1-05 |
| 461-175-0340 | 1-1-05 | Amend | 2-1-05 | 585-010-0120 | 2-11-05 | Amend | 3-1-05 |
| 461-180-0020 | 1-1-05 | Amend | 2-1-05 | 585-010-0125 | 2-11-05 | Amend | 3-1-05 |
| 461-180-0040 | 1-1-05 | Amend | 2-1-05 | 585-010-0130 | 2-11-05 | Amend | 3-1-05 |
| 461-180-0050 | 1-1-05 | Amend | 2-1-05 | 585-010-0150 | 2-11-05 | Amend | 3-1-05 |
| 461-180-0085 | 1-1-05 | Adopt | 2-1-05 | 585-010-0210 | 2-11-05 | Amend | 3-1-05 |
| 461-180-0090 | 1-1-05 | Amend | 2-1-05 | 585-010-0215 | 2-11-05 | Amend | 3-1-05 |
| 461-180-0125 | 1-1-05 | Adopt | 2-1-05 | 585-010-0220 | 2-11-05 | Amend | 3-1-05 |
| 461-195-0531 | 1-1-05 | Amend | 2-1-05 | 585-010-0230 | 2-11-05 | Amend | 3-1-05 |
| 471-015-0020 | 1-20-05 | Amend | 3-1-05 | 585-010-0300 | 2-11-05 | Renumber | 3-1-05 |
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| 471-030-0038 | 12-19-04 | Amend | 2-1-05 | 585-020-0020 | 2-11-05 | Amend | 3-1-05 |
| 471-030-0078 | 12-19-04 | Adopt | 2-1-05 | 585-020-0035 | 2-11-05 | Amend | 3-1-05 |
| 471-031-0070 | 12-19-04 | Amend | 2-1-05 | 585-020-0060 | 2-11-05 | Amend | 3-1-05 |
| 574-050-0005 | 3-8-05 | Amend | 4-1-05 | 589-020-0225 | 11-30-04 | Adopt | 1-1-05 |
| 576-020-0010 | 1-1-05 | Amend | 1-1-05 | 603-011-0610 | 2-17-05 | Amend | 4-1-05 |
| 580-021-0029 | 3-14-05 | Adopt(T) | 4-1-05 | 603-011-0620 | 2-17-05 | Amend | 4-1-05 |
| 580-040-0035 | 2-15-05 | Amend | 3-1-05 | 603-011-0630 | 2-17-05 | Amend | 4-1-05 |
| 580-043-0100 | 12-15-04 | Adopt(T) | 1-1-05 | 603-040-0010 | 11-30-04 | Repeal | 1-1-05 |
| 580-043-0105 | 12-15-04 | Adopt(T) | 1-1-05 | 603-040-0020 | 11-30-04 | Repeal | 1-1-05 |
| 580-043-0110 | 12-15-04 | Adopt(T) | 1-1-05 | 603-040-0030 | 11-30-04 | Repeal | 1-1-05 |
| 580-050-0000 | 2-10-05 | Amend(T) | 3-1-05 | 603-040-0040 | 11-30-04 | Repeal | 1-1-05 |
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| 580-050-0032 | 2-10-05 | Amend(T) | 3-1-05 | 603-040-0065 | 11-30-04 | Repeal | 1-1-05 |
| 580-050-0350 | 2-10-05 | Adopt(T) | 3-1-05 | 603-041-0015 | 11-30-04 | Repeal | 1-1-05 |
| 580-050-0360 | 2-10-05 | Adopt(T) | 3-1-05 | 603-041-0030 | 11-30-04 | Repeal | 1-1-05 |
| 581-011-0072 | 12-16-04 | Amend | 2-1-05 | 603-041-0035 | 11-30-04 | Repeal | 1-1-05 |
| 581-011-0118 | 2-14-05 | Amend | 3-1-05 | 603-041-0040 | 11-30-04 | Repeal | 1-1-05 |
| 581-021-0041 | 2-14-05 | Amend | 3-1-05 | 603-041-0050 | 11-30-04 | Repeal | 1-1-05 |
| 581-022-1110 | 3-15-05 | Amend(T) | 4-1-05 | 603-041-0060 | 11-30-04 | Repeal | 1-1-05 |
| 581-022-1111 | 2-14-05 | Amend | 3-1-05 | 603-041-0065 | 11-30-04 | Repeal | 1-1-05 |
| 581-022-1120 | 3-15-05 | Amend(T) | 4-1-05 | 603-041-0075 | 11-30-04 | Repeal | 1-1-05 |
| 581-022-1210 | 3-15-05 | Amend(T) | 4-1-05 | 603-042-0015 | 11-30-04 | Adopt | 1-1-05 |
| 581-024-0215 | 2-14-05 | Amend(T) | 3-1-05 | 603-051-1050 | 3-11-05 | Adopt | 4-1-05 |
| 582-050-0050 | 1-11-05 | Amend | 2-1-05 | 603-051-1051 | 3-11-05 | Adopt | 4-1-05 |
| 582-050-0060 | 1-11-05 | Amend | 2-1-05 | 603-051-1052 | 3-11-05 | Adopt | 4-1-05 |
| 582-070-0040 | 1-11-05 | Amend | 2-1-05 | 603-051-1053 | 3-11-05 | Adopt | 4-1-05 |
| 583-030-0025 | 3-3-05 | Amend | 4-1-05 | 603-051-1054 | 3-11-05 | Adopt | 4-1-05 |
| 583-050-0011 | 3-3-05 | Amend | 4-1-05 | 603-052-0051 | 2-14-05 | Amend | 3-1-05 |
| 584-005-0005 | 1-21-05 | Amend | 3-1-05 | 603-052-0114 | 2-14-05 | Amend | 3-1-05 |
| 584-017-0115 | 1-21-05 | Adopt | 3-1-05 | 603-052-0116 | 2-15-05 | Amend | 3-1-05 |
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| 584-017-0251 | 1-21-05 | Adopt | 3-1-05 | 603-052-0121 | 2-15-05 | Amend | 3-1-05 |
| 584-017-0260 | 1-21-05 | Amend | 3-1-05 | 603-052-0150 | 2-14-05 | Amend | 3-1-05 |
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| 584-060-0011 | 1-21-05 | Amend | 3-1-05 | 603-052-0385 | 2-15-05 | Amend | 3-1-05 |

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| 603-054-0040 | 2-15-05 | Amend | 3-1-05 | 635-016-0090 | 1-1-05 | Amend | 1-1-05 |
| 603-054-0045 | 2-15-05 | Amend | 3-1-05 | 635-016-0090 | 1-1-05 | Amend | 2-1-05 |
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| 611-010-0020 | 1-13-05 | Amend | 2-1-05 | 635-019-0090 | 1-1-05 | Amend | 1-1-05 |
| 629-025-0040 | 3-1-05 | Amend | 4-1-05 | 635-021-0080 | 1-1-05 | Amend | 1-1-05 |
| 629-025-0070 | 3-1-05 | Amend | 4-1-05 | 635-021-0090 | 1-1-05 | Amend | 1-1-05 |
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| 629-041-0200 | 1-7-05 | Amend | 2-1-05 | 635-023-0090 | 1-1-05 | Amend | 1-1-05 |
| 629-041-0515 | 1-7-05 | Amend | 2-1-05 | 635-023-0090 | 1-1-05 | Amend(T) | 1-1-05 |
| 629-041-0570 | 1-7-05 | Amend | 2-1-05 | 635-023-0090 | 1-1-05 | Amend(T) | 2-1-05 |
| 632-007-0000 | 12-10-04 | Amend | 1-1-05 | 635-023-0090(T) | 1-1-05 | Suspend | 2-1-05 |
| 632-007-0010 | 12-10-04 | Amend | 1-1-05 | 635-023-0095 | 1-1-05 | Adopt(T) | 2-1-05 |
| 632-007-0020 | 12-10-04 | Amend | 1-1-05 | 635-023-0095 | 2-14-05 | Adopt | 3-1-05 |
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| 635-003-0004 | 3-15-05 | Amend(T) | 4-1-05 | 635-023-0125 | 1-1-05 | Amend | 1-1-05 |
| 635-003-0004 | 3-15-05 | Amend(T) | 4-1-05 | 635-023-0125 | 2-14-05 | Amend | 3-1-05 |
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| 635-003-0076 | 2-14-05 | Repeal | 3-1-05 | 635-023-0130 | 1-1-05 | Amend | 1-1-05 |
| 635-003-0077 | 2-14-05 | Adopt | 3-1-05 | 635-023-0134 | 1-1-05 | Adopt | 1-1-05 |
| 635-003-0078 | 2-14-05 | Adopt | 3-1-05 | 635-039-0080 | 1-1-05 | Amend | 1-1-05 |
| 635-004-0005 | 1-1-05 | Amend | 1-1-05 | 635-039-0080 | 1-1-05 | Amend | 1-1-05 |
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| 635-042-0135(T) | 2-22-05 | Suspend | 4-1-05 | 635-078-0011 | 4-1-05 | Adopt | 2-1-05 |
| 635-042-0145 | 2-14-05 | Amend | 3-1-05 | 635-080-0065 | 1-1-05 | Amend | 2-1-05 |
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| 635-065-0625 | 1-1-05 | Amend | 2-1-05 | 635-430-0375 | 11-26-04 | Adopt | 1-1-05 |
| 635-065-0635 | 1-1-05 | Amend | 2-1-05 | 660-011-0060 | 2-14-05 | Amend | 3-1-05 |
| 635-065-0720 | 1-1-05 | Amend | 2-1-05 | 660-015-0000 | 2-14-05 | Amend | 3-1-05 |
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| 635-065-0740 | 1-1-05 | Amend | 2-1-05 | 669-010-0020 | 3-4-05 | Amend | 4-1-05 |
| 635-065-0745 | 1-1-05 | Amend | 2-1-05 | 690-021-0000 | 11-16-04 | Am. & Ren. | 1-1-05 |
| 635-065-0760 | 6-1-05 | Amend | 2-1-05 | 690-021-0010 | 11-16-04 | Am. & Ren. | 1-1-05 |
| 635-066-0000 | 1-1-05 | Amend | 2-1-05 | 690-021-0020 | 11-16-04 | Am. & Ren. | 1-1-05 |
| 635-067-0000 | 1-1-05 | Amend | 2-1-05 | 690-021-0030 | 11-16-04 | Am. & Ren. | 1-1-05 |
| 635-067-0015 | 1-1-05 | Amend | 2-1-05 | 690-021-0040 | 11-16-04 | Am. & Ren. | 1-1-05 |
| 635-067-0028 | 1-1-05 | Amend | 2-1-05 | 690-021-0050 | 11-16-04 | Am. & Ren. | 1-1-05 |
| 635-067-0029 | 1-1-05 | Amend | 2-1-05 | 690-021-0060 | 11-16-04 | Am. & Ren. | 1-1-05 |
| 635-067-0034 | 1-1-05 | Amend | 2-1-05 | 690-021-0070 | 11-16-04 | Repeal | 1-1-05 |
| 635-067-0041 | 1-1-05 | Amend | 2-1-05 | 690-021-0080 | 11-16-04 | Repeal | 1-1-05 |
| 635-068-0000 | 3-1-05 | Amend | 2-1-05 | 690-021-0090 | 11-16-04 | Am. & Ren. | 1-1-05 |
| 635-068-0022 | 3-1-05 | Amend | 2-1-05 | 690-021-0100 | 11-16-04 | Repeal | 1-1-05 |
| 635-069-0000 | 2-1-05 | Amend | 2-1-05 | 690-021-0110 | 11-16-04 | Am. & Ren. | 1-1-05 |
| 635-069-0030 | 2-1-05 | Amend | 2-1-05 | 690-021-0120 | 11-16-04 | Repeal | 1-1-05 |
| 635-070-0000 | 4-1-05 | Amend | 2-1-05 | 690-021-0130 | 11-16-04 | Repeal | 1-1-05 |
| 635-071-0000 | 4-1-05 | Amend | 2-1-05 | 690-021-0140 | 11-16-04 | Am. & Ren. | 1-1-05 |
| 635-072-0000 | 1-1-05 | Amend | 2-1-05 | 690-021-0160 | 11-16-04 | Am. & Ren. | 1-1-05 |
| 635-073-0000 | 2-1-05 | Amend | 2-1-05 | 690-021-0170 | 11-16-04 | Am. & Ren. | 1-1-05 |
| 635-073-0080 | 1-1-05 | Amend | 2-1-05 | 690-021-0200 | 11-16-04 | Am. & Ren. | 1-1-05 |
| 635-075-0005 | 1-1-05 | Amend | 2-1-05 | 690-021-0250 | 11-16-04 | Am. & Ren. | 1-1-05 |
| 635-075-0010 | 1-1-05 | Amend | 2-1-05 | 690-021-0300 | 11-16-04 | Am. & Ren. | 1-1-05 |
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| 690-385-4600 | 11-16-04 | Adopt | 1-1-05 | 731-005-0085 | 3-1-05 | Repeal | 4-1-05 |
| 690-385-4700 | 11-16-04 | Adopt | 1-1-05 | 731-005-0095 | 3-1-05 | Repeal | 4-1-05 |
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| 690-385-7000 | 11-16-04 | Adopt | 1-1-05 | 731-005-0155 | 3-1-05 | Repeal | 4-1-05 |
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| 695-045-0040 | 2-1-05 | Adopt | 3-1-05 | 731-005-0225 | 3-1-05 | Repeal | 4-1-05 |
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| 731-005-0770 | 3-1-05 | Adopt | 4-1-05 | 731-030-0130 | 11-17-04 | Amend | 1-1-05 |
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| 732-005-0046 | 1-1-05 | Amend | 2-1-05 | 734-010-0290 | 3-1-05 | Adopt | 4-1-05 |
| 732-005-0051 | 1-1-05 | Amend | 2-1-05 | 734-010-0300 | 3-1-05 | Adopt | 4-1-05 |
| 732-005-0051(T) | 1-1-05 | Repeal | 2-1-05 | 734-010-0310 | 3-1-05 | Adopt | 4-1-05 |
| 732-005-0056 | 1-1-05 | Amend | 2-1-05 | 734-010-0320 | 3-1-05 | Adopt | 4-1-05 |
| 732-005-0061 | 1-1-05 | Adopt | 2-1-05 | 734-010-0330 | 3-1-05 | Adopt | 4-1-05 |
| 732-005-0066 | 1-1-05 | Adopt | 2-1-05 | 734-010-0340 | 3-1-05 | Adopt | 4-1-05 |
| 732-005-0071 | 1-1-05 | Adopt | 2-1-05 | 734-010-0350 | 3-1-05 | Adopt | 4-1-05 |
| 732-005-0076 | 1-1-05 | Adopt | 2-1-05 | 734-010-0360 | 3-1-05 | Adopt | 4-1-05 |
| 732-005-0081 | 1-1-05 | Adopt | 2-1-05 | 734-010-0370 | 3-1-05 | Adopt | 4-1-05 |
| 732-010-0005 | 1-1-05 | Amend | 2-1-05 | 734-010-0380 | 3-1-05 | Adopt | 4-1-05 |
| 732-010-0010 | 1-1-05 | Amend | 2-1-05 | 734-071-0005 | 1-1-05 | Amend | 2-1-05 |
| 732-010-0010(T) | 1-1-05 | Repeal | 2-1-05 | 734-071-0010 | 1-1-05 | Amend | 2-1-05 |
| 732-010-0015 | 1-1-05 | Amend | 2-1-05 | 734-071-0030 | 1-1-05 | Amend | 2-1-05 |
| 732-010-0020 | 1-1-05 | Amend | 2-1-05 | 734-071-0060 | 1-1-05 | Adopt | 2-1-05 |
| 732-010-0025 | 1-1-05 | Amend | 2-1-05 | 735-001-0020 | 11-17-04 | Amend | 1-1-05 |
| 732-010-0030 | 1-1-05 | Amend | 2-1-05 | 735-001-0050 | 11-17-04 | Amend | 1-1-05 |
| 732-010-0035 | 1-1-05 | Amend | 2-1-05 | 735-010-0030 | 2-16-05 | Amend | 4-1-05 |
| 732-010-0035(T) | 1-1-05 | Repeal | 2-1-05 | 735-022-0120 | 2-16-05 | Adopt | 4-1-05 |
| 732-010-0040 | 1-1-05 | Repeal | 2-1-05 | 735-034-0010 | 2-16-05 | Amend | 4-1-05 |
| 732-010-0045 | 1-1-05 | Amend | 2-1-05 | 735-062-0000 | 1-31-05 | Amend | 3-1-05 |
| 732-020-0005 | 1-1-05 | Amend | 2-1-05 | 735-062-0020 | 2-16-05 | Amend | 4-1-05 |
| 732-020-0010 | 1-1-05 | Repeal | 2-1-05 | 735-062-0020(T) | 2-16-05 | Repeal | 4-1-05 |
| 732-020-0015 | 1-1-05 | Repeal | 2-1-05 | 735-062-0030 | 2-16-05 | Amend | 4-1-05 |
| 732-020-0020 | 1-1-05 | Amend | 2-1-05 | 735-062-0030(T) | 2-16-05 | Repeal | 4-1-05 |
| 732-020-0025 | 1-1-05 | Amend | 2-1-05 | 735-062-0085 | 1-31-05 | Amend | 3-1-05 |
| 732-020-0030 | 1-1-05 | Amend | 2-1-05 | 735-062-0090 | 1-31-05 | Amend | 3-1-05 |
| 732-020-0035 | 1-1-05 | Amend | 2-1-05 | 735-062-0090(T) | 1-31-05 | Repeal | 3-1-05 |
| 732-020-0040 | 1-1-05 | Amend | 2-1-05 | 735-062-0110 | 1-31-05 | Amend | 3-1-05 |
| 732-020-0045 | 1-1-05 | Amend | 2-1-05 | 735-062-0150 | 1-31-05 | Amend | 3-1-05 |
| 733-030-0045 | 3-14-05 | Amend(T) | 4-1-05 | 735-062-0160 | 1-31-05 | Amend | 3-1-05 |
| 734-010-0010 | 3-1-05 | Repeal | 4-1-05 | 735-062-0190 | 1-31-05 | Adopt | 3-1-05 |
| 734-010-0020 | 3-1-05 | Repeal | 4-1-05 | 735-062-0200 | 1-31-05 | Amend | 3-1-05 |
| 734-010-0030 | 3-1-05 | Repeal | 4-1-05 | 735-070-0020 | 1-31-05 | Amend | 3-1-05 |
| 734-010-0040 | 3-1-05 | Repeal | 4-1-05 | 735-070-0030 | 1-1-05 | Amend | 1-1-05 |
| 734-010-0050 | 3-1-05 | Repeal | 4-1-05 | 735-070-0054 | 11-17-04 | Amend | 1-1-05 |
| 734-010-0060 | 3-1-05 | Repeal | 4-1-05 | 735-070-0060 | 11-17-04 | Amend | 1-1-05 |
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| 735-074-0140 | 1-20-05 | Amend | 3-1-05 | 804-010-0010 | 2-14-05 | Amend | 3-1-05 |
| 735-074-0150 | 1-20-05 | Amend | 3-1-05 | 804-020-0055 | 2-14-05 | Amend | 3-1-05 |
| 735-074-0170 | 1-20-05 | Amend | 3-1-05 | 804-025-0000 | 2-14-05 | Adopt | 3-1-05 |
| 735-074-0180 | 1-20-05 | Amend | 3-1-05 | 804-025-0010 | 2-14-05 | Adopt | 3-1-05 |
| 735-074-0220 | 11-17-04 | Amend | 1-1-05 | 804-025-0020 | 2-14-05 | Adopt | 3-1-05 |
| 735-074-0260 | 1-31-05 | Amend | 3-1-05 | 804-030-0011 | 2-14-05 | Amend | 3-1-05 |
| 735-090-0000 | 11-17-04 | Amend | 1-1-05 | 804-030-0015 | 2-14-05 | Amend | 3-1-05 |
| 735-090-0020 | 11-17-04 | Amend | 1-1-05 | 804-030-0020 | 2-14-05 | Amend | 3-1-05 |
| 735-090-0040 | 11-17-04 | Amend | 1-1-05 | 804-030-0060 | 2-14-05 | Repeal | 3-1-05 |
| 735-090-0051 | 11-17-04 | Adopt | 1-1-05 | 804-040-0000 | 2-14-05 | Amend | 3-1-05 |
| 735-090-0101 | 11-17-04 | Adopt | 1-1-05 | 806-001-0003 | 7-1-05 | Amend | 4-1-05 |
| 735-090-0130 | 11-17-04 | Adopt | 1-1-05 | 808-001-0005 | 2-15-05 | Amend | 3-1-05 |
| 735-090-0130(T) | 11-17-04 | Repeal | 1-1-05 | 808-001-0030 | 2-15-05 | Amend | 3-1-05 |
| 735-118-0000 | 2-16-05 | Amend | 4-1-05 | 808-002-0260 | 2-15-05 | Amend | 3-1-05 |
| 735-118-0010 | 2-16-05 | Amend | 4-1-05 | 808-002-0325 | 2-15-05 | Adopt | 3-1-05 |
| 735-118-0030 | 2-16-05 | Amend | 4-1-05 | 808-002-0540 | 12-15-04 | Amend(T) | 1-1-05 |
| 735-150-0080 | 2-16-05 | Amend | 4-1-05 | 808-002-0540 | 2-15-05 | Amend | 3-1-05 |
| 735-152-0020 | 11-17-04 | Amend | 1-1-05 | 808-002-0540(T) | 2-15-05 | Repeal | 3-1-05 |
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| 735-168-0070 | 2-16-05 | Repeal | 4-1-05 | 808-004-0195 | 2-15-05 | Adopt | 3-1-05 |
| 736-018-0045 | 2-4-05 | Amend | 3-1-05 | 808-004-0210 | 1-1-04 | Adopt(T) | 3-1-05 |
| 740-200-0010 | 1-1-05 | Amend | 2-1-05 | 808-004-0211 | 12-15-04 | Adopt(T) | 1-1-05 |
| 740-200-0020 | 1-1-05 | Amend | 2-1-05 | 808-004-0211 | 2-15-05 | Adopt | 3-1-05 |
| 740-200-0040 | 1-1-05 | Amend | 2-1-05 | 808-004-0211(T) | 2-15-05 | Repeal | 3-1-05 |
| 800-020-0015 | 1-5-05 | Amend | 2-1-05 | 808-004-0250 | 2-15-05 | Amend | 3-1-05 |
| 801-001-0000 | 1-1-05 | Amend | 2-1-05 | 808-004-0300 | 2-15-05 | Amend | 3-1-05 |
| 801-001-0020 | 3-1-05 | Amend | 4-1-05 | 808-004-0440 | 2-15-05 | Amend | 3-1-05 |
| 801-001-0035 | 3-1-05 | Amend | 4-1-05 | 808-004-0510 | 2-15-05 | Amend | 3-1-05 |
| 801-005-0010 | 3-1-05 | Amend | 4-1-05 | 808-004-0520 | 2-15-05 | Amend | 3-1-05 |
| 801-010-0010 | 1-1-05 | Amend | 2-1-05 | 808-008-0020 | 12-15-04 | Amend(T) | 1-1-05 |
| 801-010-0050 | 1-1-05 | Amend | 2-1-05 | 808-008-0020 | 2-15-05 | Amend | 3-1-05 |
| 801-010-0060 | 1-1-05 | Amend | 2-1-05 | 808-008-0020(T) | 2-15-05 | Repeal | 3-1-05 |
| 801-010-0065 | 1-1-05 | Amend | 2-1-05 | 808-008-0030 | 12-15-04 | Amend(T) | 1-1-05 |
| 801-010-0085 | 1-1-05 | Amend | 2-1-05 | 808-008-0030 | 2-15-05 | Amend | 3-1-05 |
| 801-020-0620 | 1-1-05 | Amend | 2-1-05 | 808-008-0030(T) | 2-15-05 | Repeal | 3-1-05 |
| 801-020-0690 | 1-1-05 | Amend | 2-1-05 | 808-008-0050 | 1-1-04 | Adopt(T) | 3-1-05 |
| 801-020-0700 | 1-1-05 | Amend | 2-1-05 | 808-008-0051 | 12-15-04 | Adopt(T) | 1-1-05 |
| 801-020-0710 | 1-1-05 | Amend | 2-1-05 | 808-008-0051 | 2-15-05 | Adopt | 3-1-05 |
| 801-020-0720 | 1-1-05 | Amend | 2-1-05 | 808-008-0051(T) | 2-15-05 | Repeal | 3-1-05 |
| 801-030-0015 | 2-1-05 | Amend | 3-1-05 | 808-008-0060 | 12-15-04 | Amend(T) | 1-1-05 |
| 801-040-0010 | 1-1-05 | Amend | 2-1-05 | 808-008-0060 | 2-15-05 | Amend | 3-1-05 |
| 801-040-0020 | 1-1-05 | Amend | 2-1-05 | 808-008-0060(T) | 2-15-05 | Repeal | 3-1-05 |
| 801-040-0030 | 1-1-05 | Amend | 2-1-05 | 808-008-0085 | 12-15-04 | Amend(T) | 1-1-05 |
| 801-040-0040 | 1-1-05 | Amend | 2-1-05 | 808-008-0085 | 2-15-05 | Amend | 3-1-05 |
| 801-040-0050 | 1-1-05 | Amend | 2-1-05 | 808-008-0085(T) | 2-15-05 | Repeal | 3-1-05 |
| 801-040-0060 | 1-1-05 | Repeal | 2-1-05 | 808-008-0140 | 12-15-04 | Amend(T) | 1-1-05 |
| 801-040-0070 | 1-1-05 | Amend | 2-1-05 | 808-008-0140 | 2-15-05 | Amend | 3-1-05 |
| 801-040-0090 | 1-1-05 | Amend | 2-1-05 | 808-008-0140(T) | 2-15-05 | Repeal | 3-1-05 |
| 801-040-0100 | 1-1-05 | Amend | 2-1-05 | 808-008-0180 | 2-15-05 | Amend | 3-1-05 |
| 801-040-0150 | 1-1-05 | Amend | 2-1-05 | 808-008-0240 | 12-15-04 | Suspend | 1-1-05 |
| 801-040-0160 | 1-1-05 | Amend | 2-1-05 | 808-008-0240 | 2-15-05 | Repeal | 3-1-05 |
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| 808-008-0291 | 12-15-04 | Adopt(T) | 1-1-05 | 812-003-0180 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0291 | 2-15-05 | Adopt | 3-1-05 | 812-003-0190 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0291(T) | 2-15-05 | Repeal | 3-1-05 | 812-003-0200 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0400 | 12-15-04 | Amend(T) | 1-1-05 | 812-003-0210 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0400 | 2-15-05 | Amend | 3-1-05 | 812-003-0220 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0400(T) | 2-15-05 | Repeal | 3-1-05 | 812-003-0230 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0420 | 12-15-04 | Amend(T) | 1-1-05 | 812-003-0240 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0420 | 2-15-05 | Amend | 3-1-05 | 812-003-0260 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0420(T) | 2-15-05 | Repeal | 3-1-05 | 812-003-0270 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0425 | 12-15-04 | Amend(T) | 1-1-05 | 812-003-0280 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0425 | 2-15-05 | Amend | 3-1-05 | 812-003-0290 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0425(T) | 2-15-05 | Repeal | 3-1-05 | 812-003-0300 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0430 | 12-15-04 | Amend(T) | 1-1-05 | 812-003-0310 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0430 | 2-15-05 | Amend | 3-1-05 | 812-003-0330 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0430(T) | 2-15-05 | Repeal | 3-1-05 | 812-003-0340 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0440 | 12-15-04 | Amend(T) | 1-1-05 | 812-003-0350 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0440 | 2-15-05 | Amend | 3-1-05 | 812-003-0360 | 12-10-04 | Adopt | 1-1-05 |
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| 808-008-0460 | 12-15-04 | Amend(T) | 1-1-05 | 812-003-0380 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0460 | 2-15-05 | Amend | 3-1-05 | 812-003-0410 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0460(T) | 2-15-05 | Repeal | 3-1-05 | 812-003-0420 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0500 | 12-15-04 | Amend(T) | 1-1-05 | 812-003-0430 | 12-10-04 | Adopt | 1-1-05 |
| 808-008-0500 | 2-15-05 | Amend | 3-1-05 | 812-004-0001 | 12-10-04 | Amend | 1-1-05 |
| 808-008-0500(T) | 2-15-05 | Repeal | 3-1-05 | 812-004-0240 | 12-10-04 | Amend | 1-1-05 |
| 808-008-0511 | 12-15-04 | Adopt(T) | 1-1-05 | 812-004-0260 | 12-10-04 | Amend | 1-1-05 |
| 808-008-0511 | 2-15-05 | Adopt | 3-1-05 | 812-004-0320 | 12-10-04 | Amend | 1-1-05 |
| 808-008-0511(T) | 2-15-05 | Repeal | 3-1-05 | 812-004-0470 | 12-10-04 | Amend | 1-1-05 |
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| 808-008-0521 | 2-15-05 | Adopt | 3-1-05 | 812-004-0540 | 12-10-04 | Amend | 1-1-05 |
| 808-008-0521(T) | 2-15-05 | Repeal | 3-1-05 | 812-004-0560 | 12-10-04 | Amend | 1-1-05 |
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| 818-001-0087 | 2-1-05 | Amend | 3-1-05 | 836-052-0615 | 3-1-05 | Am. & Ren. | 4-1-05 |
| 818-021-0011 | 12-1-04 | Amend | 1-1-05 | 836-052-0616 | 3-1-05 | Adopt | 4-1-05 |
| 818-021-0025 | 12-1-04 | Amend | 1-1-05 | 836-052-0620 | 3-1-05 | Am. & Ren. | 4-1-05 |
| 818-021-0088 | 2-1-05 | Adopt | 3-1-05 | 836-052-0636 | 3-1-05 | Adopt | 4-1-05 |
| 818-026-0000 | 2-1-05 | Amend | 3-1-05 | 836-052-0640 | 3-1-05 | Am. & Ren. | 4-1-05 |
| 818-026-0010 | 2-1-05 | Amend | 3-1-05 | 836-052-0645 | 3-1-05 | Am. & Ren. | 4-1-05 |
| 818-026-0020 | 2-1-05 | Amend | 3-1-05 | 836-052-0676 | 3-1-05 | Adopt | 4-1-05 |
| 818-026-0030 | 2-1-05 | Amend | 3-1-05 | 836-052-0700 | 3-1-05 | Amend | 4-1-05 |
| 818-026-0030 | 2-1-05 | Amend | 3-1-05 | 836-052-0726 | 3-1-05 | Adopt | 4-1-05 |
| 818-026-0035 | 2-1-05 | Amend | 3-1-05 | 836-052-0746 | 3-1-05 | Adopt | 4-1-05 |
| 818-026-0040 | 2-1-05 | Amend | 3-1-05 | 836-052-0756 | 3-1-05 | Adopt | 4-1-05 |
| 818-026-0050 | 2-1-05 | Amend | 3-1-05 | 836-052-0766 | 3-1-05 | Adopt | 4-1-05 |
| 818-026-0050 | 2-1-05 | Amend | 3-1-05 | 836-053-0510 | 11-19-04 | Amend | 1-1-05 |
| 818-026-0055 | 2-1-05 | Adopt | 3-1-05 | 837-012-0510 | 12-13-04 | Amend(T) | 1-1-05 |
| 818-026-0060 | 2-1-05 | Amend | 3-1-05 | 837-012-0515 | 11-17-04 | Amend(T) | 1-1-05 |
| 818-026-0060 | 2-1-05 | Amend | 3-1-05 | 837-012-0520 | 12-13-04 | Amend(T) | 1-1-05 |
| 818-026-0070 | 2-1-05 | Amend | 3-1-05 | 837-012-0525 | 12-13-04 | Amend(T) | 1-1-05 |
| 818-026-0080 | 2-1-05 | Amend | 3-1-05 | 837-012-0530 | 11-17-04 | Amend(T) | 1-1-05 |
| 818-026-0100 | 2-1-05 | Amend | 3-1-05 | 837-012-0540 | 12-13-04 | Amend(T) | 1-1-05 |
| 818-026-0110 | 2-1-05 | Amend | 3-1-05 | 837-012-0545 | 12-13-04 | Amend(T) | 1-1-05 |
| 818-026-0120 | 2-1-05 | Amend | 3-1-05 | 837-012-0555 | 1-13-05 | Amend(T) | 2-1-05 |
| 818-026-0130 | 2-1-05 | Amend | 3-1-05 | 837-012-0610 | 2-15-05 | Amend | 3-1-05 |
| 818-035-0025 | 2-1-05 | Amend | 3-1-05 | 837-012-0615 | 2-15-05 | Amend | 3-1-05 |
| 818-035-0030 | 2-1-05 | Amend | 3-1-05 | 837-012-0620 | 2-15-05 | Amend | 3-1-05 |
| 818-042-0050 | 12-1-04 | Amend | 1-1-05 | 837-012-0625 | 2-15-05 | Amend | 3-1-05 |
| 818-042-0060 | 12-1-04 | Amend | 1-1-05 | 837-012-0645 | 2-15-05 | Amend | 3-1-05 |
| 818-042-0116 | 2-1-05 | Amend | 3-1-05 | 837-012-0650 | 2-15-05 | Amend | 3-1-05 |
| 818-042-0120 | 12-1-04 | Amend | 1-1-05 | 837-012-0670 | 2-15-05 | Amend | 3-1-05 |
| 818-042-0130 | 12-1-04 | Amend | 1-1-05 | 837-012-0750 | 2-15-05 | Amend | 3-1-05 |
| 836-014-0400 | 3-21-05 | Adopt | 4-1-05 | 837-012-1230 | 2-17-05 | Amend | 4-1-05 |
| 836-052-0500 | 3-1-05 | Amend | 4-1-05 | 837-040-0010 | 1-3-05 | Amend(T) | 2-1-05 |
| 836-052-0510 | 3-1-05 | Repeal | 4-1-05 | 839-003-0040 | 1-7-05 | Amend | 2-1-05 |
| 836-052-0515 | 3-1-05 | Repeal | 4-1-05 | 839-004-0021 | 1-19-05 | Amend | 2-1-05 |
| 836-052-0516 | 3-1-05 | Adopt | 4-1-05 | 839-009-0240 | 1-7-05 | Amend | 2-1-05 |
| 836-052-0520 | 3-1-05 | Repeal | 4-1-05 | 839-009-0260 | 1-7-05 | Amend | 2-1-05 |
| 836-052-0525 | 3-1-05 | Repeal | 4-1-05 | 839-010-0200 | 1-7-05 | Adopt | 2-1-05 |
| 836-052-0526 | 3-1-05 | Adopt | 4-1-05 | 839-010-0205 | 1-7-05 | Adopt | 2-1-05 |
| 836-052-0530 | 3-1-05 | Am. & Ren. | 4-1-05 | 839-010-0210 | 1-7-05 | Adopt | 2-1-05 |
| 836-052-0535 | 3-1-05 | Am. & Ren. | 4-1-05 | 839-016-0000 | 3-1-05 | Am. & Ren. | 4-1-05 |
| 836-052-0536 | 3-1-05 | Adopt | 4-1-05 | 839-016-0002 | 3-1-05 | Am. & Ren. | 4-1-05 |
| 836-052-0540 | 3-1-05 | Repeal | 4-1-05 | 839-016-0003 | 3-1-05 | Am. & Ren. | 4-1-05 |
| 836-052-0545 | 3-1-05 | Am. & Ren. | 4-1-05 | 839-016-0004 | 3-1-05 | Am. & Ren. | 4-1-05 |
| 836-052-0546 | 3-1-05 | Adopt | 4-1-05 | 839-016-0006 | 3-1-05 | Am. & Ren. | 4-1-05 |

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| 839-016-0008 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-001-0000 | 12-29-04 | Amend | 2-1-05 |
| 839-016-0010 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-001-0005 | 12-29-04 | Amend | 2-1-05 |
| 839-016-0013 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-005-0030 | 12-29-04 | Adopt | 2-1-05 |
| 839-016-0020 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-010-0010 | 12-29-04 | Amend | 2-1-05 |
| 839-016-0025 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-010-0015 | 12-29-04 | Amend | 2-1-05 |
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| 839-016-0033 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-010-0026 | 12-29-04 | Amend | 2-1-05 |
| 839-016-0034 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-010-0033 | 12-29-04 | Adopt | 2-1-05 |
| 839-016-0035 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-010-0035 | 12-29-04 | Amend | 2-1-05 |
| 839-016-0040 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-010-0044 | 12-29-04 | Adopt | 2-1-05 |
| 839-016-0043 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-010-0045 | 12-29-04 | Repeal | 2-1-05 |
| 839-016-0045 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-010-0050 | 12-29-04 | Repeal | 2-1-05 |
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| 839-016-0060 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-010-0080 | 12-29-04 | Repeal | 2-1-05 |
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| 839-016-0085 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-010-0110 | 12-29-04 | Repeal | 2-1-05 |
| 839-016-0090 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-010-0115 | 12-29-04 | Repeal | 2-1-05 |
| 839-016-0095 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-010-0120 | 12-29-04 | Repeal | 2-1-05 |
| 839-016-0100 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-010-0125 | 12-29-04 | Repeal | 2-1-05 |
| 839-016-0150 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-015-0010 | 12-29-04 | Adopt | 2-1-05 |
| 839-016-0155 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-015-0020 | 12-29-04 | Adopt | 2-1-05 |
| 839-016-0200 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-015-0030 | 12-29-04 | Adopt | 2-1-05 |
| 839-016-0210 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-020-0000 | 12-29-04 | Amend | 2-1-05 |
| 839-016-0220 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-020-0010 | 12-29-04 | Amend | 2-1-05 |
| 839-016-0230 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-020-0020 | 12-29-04 | Repeal | 2-1-05 |
| 839-016-0240 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-020-0030 | 12-29-04 | Amend | 2-1-05 |
| 839-016-0300 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-020-0040 | 12-29-04 | Amend | 2-1-05 |
| 839-016-0310 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-020-0050 | 12-29-04 | Amend | 2-1-05 |
| 839-016-0320 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-020-0060 | 12-29-04 | Amend | 2-1-05 |
| 839-016-0330 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-030-0000 | 12-29-04 | Amend | 2-1-05 |
| 839-016-0340 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-030-0010 | 12-29-04 | Amend | 2-1-05 |
| 839-016-0500 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-040-0000 | 12-29-04 | Repeal | 2-1-05 |
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| 839-016-0540 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-040-0040 | 12-29-04 | Repeal | 2-1-05 |
| 839-016-0700 | 12-13-04 | Amend | 1-1-05 | 848-040-0050 | 12-29-04 | Repeal | 2-1-05 |
| 839-016-0700 | 1-1-05 | Amend | 2-1-05 | 848-040-0100 | 12-29-04 | Adopt | 2-1-05 |
| 839-016-0700 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-040-0105 | 12-29-04 | Adopt | 2-1-05 |
| 839-016-0750 | 3-1-05 | Am. & Ren. | 4-1-05 | 848-040-0110 | 12-29-04 | Adopt | 2-1-05 |
| 839-021-0106 | 1-3-05 | Adopt | 2-1-05 | 848-040-0115 | 12-29-04 | Adopt | 2-1-05 |
| 839-021-0355 | 1-3-05 | Amend | 2-1-05 | 848-040-0120 | 12-29-04 | Adopt | 2-1-05 |
| 839-050-0050 | 2-11-05 | Amend | 3-1-05 | 848-040-0125 | 12-29-04 | Adopt | 2-1-05 |
| 839-050-0220 | 2-11-05 | Amend | 3-1-05 | 848-040-0130 | 12-29-04 | Adopt | 2-1-05 |
| 839-050-0360 | 2-11-05 | Amend | 3-1-05 | 848-040-0135 | 12-29-04 | Adopt | 2-1-05 |
| 845-004-0101 | 1-1-05 | Amend | 1-1-05 | 848-040-0140 | 12-29-04 | Adopt | 2-1-05 |
| 845-005-0312 | 1-1-05 | Amend | 2-1-05 | 848-040-0145 | 12-29-04 | Adopt | 2-1-05 |
| 845-009-0200 | 1-1-05 | Amend | 2-1-05 | 848-040-0150 | 12-29-04 | Adopt | 2-1-05 |
| 845-010-0905 | 12-1-04 | Amend | 1-1-05 | 848-040-0155 | 12-29-04 | Adopt | 2-1-05 |
| 845-010-0915 | 12-1-04 | Amend | 1-1-05 | 848-040-0160 | 12-29-04 | Adopt | 2-1-05 |
| 845-015-0175 | 1-1-05 | Amend | 2-1-05 | 848-040-0165 | 12-29-04 | Adopt | 2-1-05 |
| 847-015-0025 | 1-27-05 | Amend | 3-1-05 | 848-040-0170 | 12-29-04 | Adopt | 2-1-05 |
| 847-035-0030 | 1-27-05 | Amend | 3-1-05 | 848-045-0010 | 12-29-04 | Adopt | 2-1-05 |

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| 848-050-0100 | 12-29-04 | Adopt | 2-1-05 | 860-014-0065 | 12-30-04 | Amend | 2-1-05 |
| 848-050-0110 | 12-29-04 | Adopt | 2-1-05 | 860-014-0070 | 12-30-04 | Amend | 2-1-05 |
| 848-050-0120 | 12-29-04 | Adopt | 2-1-05 | 860-014-0090 | 12-30-04 | Amend | 2-1-05 |
| 850-010-0220 | 2-4-05 | Amend | 3-1-05 | 860-014-0092 | 12-30-04 | Amend | 2-1-05 |
| 850-010-0225 | 2-4-05 | Amend | 3-1-05 | 860-016-0020 | 2-11-05 | Amend | 3-1-05 |
| 850-020-0000 | 2-4-05 | Amend | 3-1-05 | 860-016-0021 | 2-11-05 | Adopt | 3-1-05 |
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| 850-020-0015 | 2-4-05 | Repeal | 3-1-05 | 860-021-0021 | 12-1-04 | Amend | 1-1-05 |
| 850-020-0020 | 2-4-05 | Amend | 3-1-05 | 860-021-0034 | 12-1-04 | Amend | 1-1-05 |
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| 851-050-0002 | 2-17-05 | Amend | 4-1-05 | 860-021-0036 | 12-30-04 | Amend | 2-1-05 |
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| 851-050-0131 | 2-17-05 | Amend | 4-1-05 | 860-021-0037 | 12-30-04 | Amend | 2-1-05 |
| 852-005-0010 | 2-23-05 | Amend | 4-1-05 | 860-021-0125 | 12-1-04 | Amend | 1-1-05 |
| 852-010-0015 | 2-23-05 | Amend | 4-1-05 | 860-021-0130 | 12-1-04 | Amend | 1-1-05 |
| 852-010-0020 | 2-23-05 | Amend | 4-1-05 | 860-021-0200 | 12-1-04 | Amend | 1-1-05 |
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| 852-010-0027 | 2-23-05 | Amend | 4-1-05 | 860-021-0206 | 12-1-04 | Amend | 1-1-05 |
| 852-050-0018 | 2-23-05 | Amend | 4-1-05 | 860-021-0210 | 12-1-04 | Amend | 1-1-05 |
| 852-070-0030 | 2-23-05 | Amend | 4-1-05 | 860-021-0420 | 12-1-04 | Amend | 1-1-05 |
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| 855-041-0620 | 3-1-05 | Adopt | 3-1-05 | 860-022-0038 | 12-30-04 | Amend | 2-1-05 |
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| 860-011-0023 | 12-30-04 | Repeal | 2-1-05 | 860-033-0008 | 12-1-04 | Adopt | 1-1-05 |
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| 860-011-0080 | 12-30-04 | Amend | 2-1-05 | 860-033-0050 | 12-1-04 | Amend | 1-1-05 |
| 860-012-0007 | 12-1-04 | Amend | 1-1-05 | 860-033-0505 | 12-1-04 | Amend | 1-1-05 |
| 860-012-0015 | 12-28-04 | Amend | 2-1-05 | 860-033-0530 | 12-1-04 | Amend | 1-1-05 |
| 860-013-0021 | 12-30-04 | Am. & Ren. | 2-1-05 | 860-033-0535 | 12-1-04 | Amend | 1-1-05 |
| 860-013-0036 | 12-30-04 | Adopt | 2-1-05 | 860-033-0536 | 12-1-04 | Amend | 1-1-05 |
| 860-013-0037 | 12-30-04 | Adopt | 2-1-05 | 860-033-0537 | 12-1-04 | Amend | 1-1-05 |
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| 860-013-0070 | 12-30-04 | Amend | 2-1-05 | 860-034-0090 | 12-1-04 | Amend | 1-1-05 |
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| 860-034-0097 | 12-30-04 | Amend | 2-1-05 | 918-305-0030 | 4-1-05 | Amend | 1-1-05 |
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| 860-034-0140 | 12-1-04 | Amend | 1-1-05 | 918-305-0105 | 4-1-05 | Adopt | 1-1-05 |
| 860-034-0160 | 12-1-04 | Amend | 1-1-05 | 918-305-0110 | 4-1-05 | Amend | 1-1-05 |
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| 860-036-0035 | 12-1-04 | Amend | 1-1-05 | 918-305-0165 | 4-1-05 | Amend | 1-1-05 |
| 860-036-0040 | 12-1-04 | Amend | 1-1-05 | 918-305-0180 | 4-1-05 | Amend | 1-1-05 |
| 860-036-0050 | 12-1-04 | Amend | 1-1-05 | 918-305-0250 | 4-1-05 | Amend | 1-1-05 |
| 860-036-0075 | 12-1-04 | Amend | 1-1-05 | 918-305-0270 | 4-1-05 | Amend | 1-1-05 |
| 860-036-0095 | 12-1-04 | Amend | 1-1-05 | 918-305-0280 | 4-1-05 | Adopt | 1-1-05 |
| 860-036-0095 | 12-30-04 | Amend | 2-1-05 | 918-305-0290 | 4-1-05 | Adopt | 1-1-05 |
| 860-036-0097 | 12-1-04 | Amend | 1-1-05 | 918-305-0300 | 4-1-05 | Adopt | 1-1-05 |
| 860-036-0097 | 12-30-04 | Amend | 2-1-05 | 918-305-0310 | 4-1-05 | Adopt | 1-1-05 |
| 860-036-0115 | 12-1-04 | Amend | 1-1-05 | 918-305-0320 | 4-1-05 | Adopt | 1-1-05 |
| 860-036-0125 | 12-1-04 | Amend | 1-1-05 | 918-306-0005 | 4-1-05 | Amend | 1-1-05 |
| 860-036-0605 | 12-30-04 | Amend | 2-1-05 | 918-525-0065 | 3-1-05 | Amend | 4-1-05 |
| 860-036-0615 | 12-30-04 | Amend | 2-1-05 | 918-525-0070 | 3-1-05 | Amend | 4-1-05 |
| 860-036-0625 | 12-30-04 | Amend | 2-1-05 | 918-525-0080 | 3-1-05 | Amend | 4-1-05 |
| 860-036-0645 | 12-30-04 | Amend | 2-1-05 | 918-525-0230 | 3-1-05 | Repeal | 4-1-05 |
| 860-037-0030 | 12-1-04 | Amend | 1-1-05 | 918-525-0250 | 3-1-05 | Amend | 4-1-05 |
| 860-037-0035 | 12-1-04 | Amend | 1-1-05 | 918-525-0450 | 3-1-05 | Amend | 4-1-05 |
| 860-037-0045 | 12-1-04 | Amend | 1-1-05 | 918-525-0510 | 3-1-05 | Amend | 4-1-05 |
| 860-037-0070 | 12-1-04 | Amend | 1-1-05 | 918-690-0420 | 4-1-05 | Amend | 1-1-05 |
| 860-037-0095 | 12-1-04 | Amend | 1-1-05 | 918-750-0110 | 4-1-05 | Amend | 1-1-05 |
| 860-037-0095 | 12-30-04 | Amend | 2-1-05 | 951-002-0000 | 11-26-04 | Adopt | 1-1-05 |
| 860-037-0097 | 12-1-04 | Amend | 1-1-05 | 951-002-0001 | 11-26-04 | Adopt | 1-1-05 |
| 860-037-0097 | 12-30-04 | Amend | 2-1-05 | 951-002-0005 | 11-26-04 | Adopt | 1-1-05 |
| 860-037-0110 | 12-1-04 | Amend | 1-1-05 | 951-002-0010 | 11-26-04 | Adopt | 1-1-05 |
| 860-037-0410 | 12-30-04 | Amend | 2-1-05 | 951-002-0020 | 11-26-04 | Adopt | 1-1-05 |
| 860-037-0420 | 12-30-04 | Amend | 2-1-05 | 951-003-0000 | 11-26-04 | Adopt | 1-1-05 |
| 860-037-0430 | 12-30-04 | Amend | 2-1-05 | 951-003-0001 | 11-26-04 | Adopt | 1-1-05 |
| 860-037-0450 | 12-30-04 | Amend | 2-1-05 | 951-003-0005 | 11-26-04 | Adopt | 1-1-05 |

