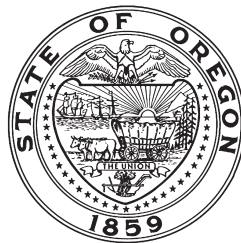


# OREGON BULLETIN

Supplements the 2005 *Oregon Administrative Rules Compilation*

**Volume 44, No. 8**  
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For June 16, 2005–July 15, 2005



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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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## OTHER NOTICES

### **BURLINGTON NORTHERN & SANTA FE RAILROAD COMPANY SUBMITS CORRECTIVE ACTION PLAN FORMER GILMORE OIL, 725 S. RIVERSIDE DR., KLAMATH FALLS, OREGON**

**PROJECT LOCATION:** 725 S. Riverside Dr., Oregon.  
Pursuant to Oregon Revised Statute (ORS) 465.320, DEQ is issuing this notice regarding Burlington Northern & Santa Fe Railroad Company submittal to the Oregon Department of Environmental Quality (DEQ) a corrective action plan to address petroleum contamination from a former bulk fuel facility located at 725 S. Riverside Dr., in Klamath Falls.

The plan proposes completing delineation of the extent of soil and groundwater contamination and completing four quarters of groundwater sampling. The corrective action plan is available for public review and comment by appointment at DEQ's Pendleton Office.

To schedule an appointment call or for additional information, contact the DEQ Project Manager, Katie Robertson, at (541) 278-4620 or by email at robertson.katie@deq.state.or.us. Interested persons should send comments on the plan by 5 p.m. August 31, 2005 to the DEQ project manager at DEQ, 700 SE Emigrant, Suite 330, Pendleton, OR 97801.

### **PROPOSED APPROVAL OF CLEANUP LINNTON OIL FIRE TRAINING GROUND SITE NW MARINA WAY, PORTLAND, OREGON**

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

**COMMENTS DUE:** August 31, 2005

**PROPOSAL:** The Oregon Department of Environmental Quality (DEQ) proposes to approve a cleanup of contaminated soil at the Linton Oil Fire Training Grounds (LOFTG) Site.

**HIGHLIGHTS:** The LOFTG Site was used for fire training by the City of Portland from 1951 until 1988. The site is about 500 feet from the Willamette River, and is located at approximately River Mile 3.5 within the Portland Harbor Superfund Site. Following a Remedial Investigation and Feasibility Study, DEQ selected cleanup actions for the site in a Record of Decision signed on May 14, 1996. Cleanup actions included soil excavation and treatment, and deed restrictions were implemented to prevent exposure to contaminated groundwater and unexcavated soil containing residual contamination. Five years of groundwater quality monitoring indicates that the plume of contaminated groundwater is decreasing in concentration and is not migrating towards or impacting the Willamette River. Recent evaluation of potential contaminant migration through a surface water drainage pathway indicated that the site is not contributing contamination to the river.

DEQ recommends that no further action be required at the site except for continued implementation of deed restrictions and groundwater monitoring to confirm natural attenuation of remaining groundwater contaminants.

**INFORMATION:** The project file is available for public review. To schedule an appointment call (503) 229-6729. For additional information regarding the selected cleanup actions for the site, contact the DEQ project manager, Tom Gainer, at (503) 229-5326.

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

### **NOTICE OF PROPOSED REMEDIAL ACTION FORMER KLAMATH BRICK & TILE FACILITY 2420 MONTELIUS AVENUE, KLAMATH FALLS, OREGON**

**PROJECT LOCATION:** 2420 Montelius Avenue, Klamath Falls, Oregon.

Pursuant to Oregon Revised Statute (ORS) 465.320, the Oregon Department of Environmental Quality (DEQ) is issuing this notice

regarding the proposed remedial action for the former Klamath Brick & Tile facility located at 2420 Montelius Avenue in Klamath Falls.

The proposed remedial action is documented in the report entitled *Final Corrective Action Plan for Jeld-Wen, Inc. Former Klamath Brick And Tile Facility*, dated June 21, 2004. A total of seven underground storage tanks (USTs) which held petroleum products, were decommissioned by removal in March, 1994. The remedial action selected for this site is a risk-based closure based on soil and groundwater sample results obtained during past investigations; analytical results were compared to risk-based cleanup levels published in the DEQ document *Risk-Based Corrective Action at Petroleum Contaminated Sites*, September 22, 2003. Low concentrations of benzene and naphthalene impact shallow groundwater at the site, however pose no risk to human health as the groundwater is not currently used as drinking water nor is it likely to be used as drinking water in the future.

**INFORMATION:** The decision document and documentation of remedial actions performed at the site are available for public review, by appointment, at DEQ's Eastern Region Office in Bend; to schedule an appointment please call the Bend office at (541) 388-6146.

DEQ will consider all comments received during the public comment period.

**HOW TO COMMENT:** By phone, fax, mail or email; please direct comments and questions to:

Joe Klemz, Project Manager, 2146 NE 4th Street, Bend, OR 97701

Phone: (541) 388-6146, ext. 237; Fax: (541) 388-8283

Email: klemz.joe@deq.state.or.us

Following the public comment period, the site will receive a No Further Action determination.

### **PROPOSED REMEDIAL ACTION AT THE INTEL-ALOHA SITE**

**COMMENTS DUE:** August 30, 2005

**PROJECT LOCATION:** 3585 SW 198th Avenue, Aloha, Oregon

**PROPOSAL:** As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on remedial action proposed for contaminated groundwater at the Intel-Aloha site located in Aloha, Oregon. The proposed action consists of continued hydraulic containment, organic in-situ biological treatment of the shallow and intermediate (if needed) aquifers using sodium lactate, and monitored natural attenuation. Site soil does not contain significant amounts of contamination and treatment is not needed.

**HIGHLIGHTS:** Intel-Aloha is a large microchip manufacturing facility located at the southwest corner of SW Tualatin Valley Hwy. and SW 198th Avenue in Aloha (Washington County) in an area of mixed industrial, commercial, and residential use. In 1982 Intel found shallow groundwater in the eastern site to be contaminated with volatile organic compounds (VOCs), the source being a leaking underground storage tank. Extensive soil and groundwater investigation ensued, most of which was performed under DEQ's Voluntary Cleanup Program starting in 1993. It was determined that shallow groundwater near the eastern property boundary contained elevated VOCs. A groundwater containment system was subsequently installed by Intel to prevent contaminated groundwater from leaving the site. In addition to investigation, two groundwater treatment studies (field pilots) have been completed. While groundwater contaminants are naturally degrading, they remain above risk-based concentrations based on hypothetical use of groundwater for drinking purposes (at present there is no known use of groundwater in the site vicinity). The proposed remedial action for the site is continued operation of the groundwater extraction system to prevent off-site migration, and injection of sodium lactate to accelerate the breakdown of VOCs that is already occurring. A period of groundwater monitoring will ensue following injection to ensure that contaminant concentrations are reduced to acceptable levels. Work will be performed with DEQ Voluntary Cleanup Program oversight.



## OTHER NOTICES

**HOW TO COMMENT:** To review project records, please call (503) 229-6729. The DEQ project manager is Dan Hafley (503-229-5417). Written comments should be sent to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201 by August 30, 2005. A public meeting will be held to receive verbal comments if requested by 10 or more people, or by a group with a membership of 10 or more.

**THE NEXT STEP:** DEQ will consider all comments received and make a final decision after consideration of these comments.

### PROPOSED CLOSEOUT AT BANK OF CALIFORNIA-ASTORIA SITE

**COMMENTS DUE:** August 30, 2005

**PROJECT LOCATION:** 927 Marine Drive, Astoria, Oregon

**PROPOSAL:** As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on its proposal to approve the completion of remedial action at the Bank of California-Astoria site.

**HIGHLIGHTS:** The 0.15-acre site is located at 927 Marine Drive in downtown Astoria. A small commercial building is located on-site, but is currently vacant. The building is situated on a concrete platform built over the site, with open areas located beneath the platform. A gasoline station operated at the site from approximately 1940 to 1968, during which time gasoline, diesel, and waste oil tanks were situated below the site platform. Releases from the tanks and related activities resulted in contamination of soil with lead and petroleum hydrocarbons. Soil removal actions were completed in 1999 and 2001 to address the highest concentrations of impacted soil, after which remaining contamination was partially capped. A Risk Assessment was subsequently completed in 2003 which determined that further action site action was necessary, and a Feasibility Study was completed in 2004 to identify an appropriate site remedy. Following public notice and comment, a remedy was selected consisting of: 1) removal of additional contaminated soil and capping of all impacted areas with clean soil or rock; 2) fencing to prevent access to the contamination area; 3) yearly inspection of the cap and fencing; and 4) removal and disposal of localized hot spot soils in the event that they become accessible in the future. Soil removal, capping, and fencing work were completed in early 2005. Based on this work, no further action appears to be necessary provided that site controls are maintained.

**HOW TO COMMENT:** To review project records, contact Dawn Weinburger at (503) 229-5425. The DEQ project manager is Dan Hafley (503-229-5417). Written comments should be sent to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201 by August 30, 2005. A public meeting will be held to receive verbal comments if requested by 10 or more people, or by a group with a membership of 10 or more.

**THE NEXT STEP:** DEQ will consider all comments received and make a final decision after consideration of these comments. Oregon Department of Environmental Quality

### NOTICE OF PROPOSED REMEDIAL ACTION PONY SOLDIER INN, 1060 NE CLEVELAND, GRESHAM, OREGON

**PROJECT LOCATION:** 1060 NE Cleveland, Gresham, Oregon. Pursuant to Oregon Revised Statute (ORS) 465.320, the Oregon Department of Environmental Quality (DEQ) is issuing this notice regarding the proposed remedial action for the Pony Soldier Inn located at 1060 NE Cleveland in Gresham.

The proposed remedial action is documented in the Proposed Remedial Action Decision Document, dated May 14, 2004. The remedial action selected for this site is an institutional control in the

form of an Equitable Easement and Servitude (EE&S). The EE&S will restrict the property use to commercial or industrial use, prohibit groundwater use, and require appropriate measures to be undertaken to mitigate the potential for vapor intrusion in the event future construction is planned. The site will be listed on the DEQ's Confirmed Release List and Inventory of Hazardous Substances. Following the recordation of the EE&S, the site will be issued a Conditional No Further Action determination. DEQ will consider all public comments received before issuing the final approval of the proposed remedial action.

**INFORMATION:** The decision document and documentation of remedial actions performed at the site are available for public review by appointment at DEQ's Northwest Region Office. To schedule an appointment call (503) 229-6729. For additional information, contact DEQ Project Manager, Katie Robertson at (541) 278-4620 or by email at robertson.katie@deq.state.or.us.

### NOTICE OF NO FURTHER ACTION OREGON FRUIT PRODUCTS, 150 PATTERSON STREET NW, SALEM, OREGON

**PROJECT LOCATION:** Oregon Fruit Products, 150 Patterson Street, NW, Salem, Oregon 97304

**OVERVIEW:** The Department of Environmental Quality (DEQ) has determined that no historical or current activities from Oregon Fruit Products near storm drains #1 & 2 have resulted in conditions that pose an unacceptable risk to public health, safety, and the environment. The site has received a no further action determination for the soils near the stormwater drains.

**HIGHLIGHTS:** In June of 2004, DEQ's site assessment program conducted a Preliminary Assessment Equivalent and determined that an Expanded Preliminary Assessment was required to determine actual contaminant levels in the soil near the stormwater drains.

In June of 2005, Oregon Fruit Products' consultant, Bergeson-Boese & Associates submitted an Expanded Preliminary Assessment Letter Report for closure under the ICP program. DEQ reviewed this letter report and conducted a site visit to determine if site conditions are sufficiently protective of human health and the environment to warrant site closure. A total of seven soil samples were collected around Storm Drains 1&2 and detected four metals above background concentrations but below risk-based acceptable levels for industrial use. While it may be possible that surface runoff from soils around storm drain #1 are contributing to metals loading to the storm drain, the graveled surface area draining into this storm drain is not located on Oregon Fruit Product's property. It is unlikely that metals found in soils around storm drain #2 are migrating into the stormwater because the area is now paved as is the storm collection basin.

A copy of the Staff Memorandum and other information on the project may be viewed at DEQ's Salem's Office, 750 Front Street, NE, Suite 120, Salem, OR 97301.

**QUESTIONS:** Questions about the site should be directed to Angie Obery at DEQ's Eugene office, 1102 Lincoln St., Suite 210, Eugene, OR 97401, (800) 844-8467, ext. 265, or by e-mail at obery.angie@deq.state.or.us.

### PROPOSED NO FURTHER ACTION DECISION W.G MOE & SONS SITE, 8850 SE 76TH DRIVE PORTLAND, OREGON

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

**COMMENTS DUE:** August 31, 2005

**PROPOSAL:** DEQ proposes issuing a No Further Action (NFA) decision for the W.G. Moe & Sons site. The 1.2-acre site is located in Township 1S, Range 2E, Section 29ab of Clackamas County, adjacent to Johnson Creek in Portland, Oregon.

## OTHER NOTICES

Moe & Sons purchased the property in 1979 as undeveloped land and operated it as a construction contracting company from approximately 1979 through 2004. From the early 1980s until 1986, a site building was leased and operated as an auto body shop. Underground storage tanks (USTs) for fuel and waste oil were operated at the facility until 1993, when they were decommissioned. Above ground storage tanks were installed to replace the USTs. The site has recently been sold to a landscaping company.

**HIGHLIGHTS:** The Department of Environmental Quality (DEQ) has completed its environmental evaluation of the W.G. Moe & Sons site. Environmental investigations completed between 1993 and 2005 included several phases of soil and groundwater sampling and testing to determine if the USTs or other site activities had caused environmental impacts. Between December 2004 and April 2005, investigations focused on the former auto body shop dry well, soil around the perimeter of the former auto body shop building, groundwater downgradient of the former waste oil UST, shallow soil adjacent to the stormwater system, and offsite upgradient groundwater quality. Site-wide groundwater testing was conducted in January 2005.

The environmental testing at the site identified petroleum hydrocarbon constituents in site soil, and some metals in soil at concentrations above background. Petroleum hydrocarbon constituents and metals above background were not found in groundwater. Lead and phthalates were detected in soils at the base of the dry well. These soils were removed during drywell decommissioning.

DEQ completed a risk screening of the more recent data to evaluate potential human health and ecological risks posed by impacted soil and groundwater. The findings of the risk screening indicate that residual impacts do not pose an unacceptable risk to human health or the environment. Based on the risk screening results, DEQ proposes issuing an NFA for the site.

**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 August 31, 2005. A public meeting will be held to receive comments if requested by 10 or more persons or by a group with a membership of 10 or more.

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

### PROPOSED NO FURTHER ACTION DETERMINATION RON TONKIN GRESHAM HONDA GRESHAM, OREGON

**COMMENTS DUE:** August 31, 2005

**PROJECT LOCATION:** 675 E. Burnside St., Gresham, Multnomah County, Oregon

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a No Further Action determination following excavation of three drywells and contaminated soil at Ron Tonkin Gresham Honda. This determination is based on approval of investigation and remedial measures conducted to date. Public notification is required by ORS 465.320.

**HIGHLIGHTS:** Ron Tonkin Gresham Honda is an auto dealership in Gresham, Oregon. The facility had three connected drywells on the northwest portion of the property that handled waste water from wash rack catch basins, shop catch basins and rain drains. The drywells were used from the 1960s until 2000, when they were removed along with 150 tons of contaminated soil surrounding them. Waste water from the site is now handled by the City of Gresham's sanitary sewer system.

Additional soil and groundwater sampling was conducted in 2004. A risk assessment based on the 2000 and 2004 data indicates that remaining contamination does not exceed acceptable levels. DEQ has therefore determined that no further action is required.

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

Bob Schwarz, Project Manager

Phone: 541-298-7255, ext. 30

Fax: 541-298-7330

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

To schedule an appointment or to obtain a copy of the staff report, please contact Mr. Schwarz as well. Written comments should be sent by Wednesday, August 31, 2005.

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

# NOTICES OF PROPOSED RULEMAKING

## Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

.....  
**Board of Examiners for Speech-Language  
Pathology and Audiology  
Chapter 335**

**Date:** 9-9-05      **Time:** 10-11 a.m.      **Location:** State Office Bldg., Rm. 445  
800 NE Oregon St.  
Portland, OR

**Hearing Officer:** Nancy Dunn, Vice Chair  
**Stat. Auth.:** ORS 681.340, 681.360, 681.420 & 681.460  
**Stats. Implemented:** ORS 681.320, 681.330, 681.340, 681.360, ORS 25.278, Social Security Act, Sec. 466(a)(13) & HB 2065  
**Proposed Adoptions:** 335-095-0055  
**Proposed Amendments:** 335-005-0025, 335-060-0010, 335-060-0060, 335-070-0040, 335-070-0060, 335-070-0080, 335-070-0085  
**Proposed Repeals:** 335-095-0020  
**Last Date for Comment:** 9-9-05

**Summary:** Rule 335-095-0055 is a new rule outlining the process for a speech-language pathologist licensed by the Teachers Standards and Practices Commission to apply for and gain permission to supervise speech-language pathology assistants in schools.

Amended rule 335-005-0025(11)(c) eliminates the requirement for audiology licensees to submit records of hours worked at various business locations at the time of licensure renewal.

Amended rule 335-060-0010 outlines new fees for applications, delinquency fees, audiology and speech-language pathology licenses.

Amended rule 335-060-0060 outlines the procedure for applicants that do not have a social security number.

Amended rule 335-070-0040 restricts professional development credit for a particular activity to only once during a licensing period even if a licensee repeats the activity.

Other amended rules in division 70 attempt to clarify the professional development reporting requirements for new licensees and deletes outdated requirements.

Repealed rule in division 95 removes outdated text.

Full text of the proposed rules may be viewed on the Agency website at [www.bspa.state.or.us](http://www.bspa.state.or.us) or by contacting the Board office at (971) 673-0220 for a hard copy.

**Rules Coordinator:** Brenda Felber  
**Address:** Board of Examiners for Speech-Language Pathology and Audiology, 800 NE Oregon St., Suite 407, Portland, OR 97232  
**Telephone:** (971) 673-0220

.....  
**Board of Nursing  
Chapter 851**

**Date:** 9-22-05      **Time:** 9 a.m.      **Location:** Portland State Office Bldg.  
800 NE Oregon St.  
Rm. 120-C  
Portland, OR 97232

**Hearing Officer:** Marguerite Gutierrez, Board President  
**Stat. Auth.:** ORS 678.385

**Stats. Implemented:** ORS 678.375 & 678.385  
**Proposed Amendments:** 851-050-0131

**Last Date for Comment:** 9-20-05, 5 p.m.

**Summary:** The Board is authorized by ORS 678.385 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. This amendment adds the June, July and August 2005 updates to Drugs Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion. The Board may also petition to add currently excluded drugs to the Nurse Practitioner formulary.

**Rules Coordinator:** KC Cotton  
**Address:** Board of Nursing, 800 NE Oregon St., Suite 465, Portland, OR 97232-2162  
**Telephone:** (503) 731-4754

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**Date:** 9-22-05      **Time:** 9 a.m.      **Location:** Portland State Office Bldg.  
800 NE Oregon St.  
Rm. 120-C  
Portland, OR 97232

**Hearing Officer:** Marguerite Gutierrez, Board President  
**Stat. Auth.:** ORS 678.150

**Stats. Implemented:** ORS 678.150  
**Proposed Amendments:** 851-010-0010

**Last Date for Comment:** 9-20-05, 5 p.m.

**Summary:** The Board is authorized by ORS 678.150 to elect annually from its number a President and Secretary, each of whom shall serve until a successor is elected and qualified. The Board decided at its June 16, 2005 meeting to remove the limit of two successive terms that an officer may serve.

**Rules Coordinator:** KC Cotton  
**Address:** Board of Nursing, 800 NE Oregon St., Suite 465, Portland, OR 97232-2162  
**Telephone:** (503) 731-4754

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**Construction Contractors Board  
Chapter 812**

**Date:** 8-23-05      **Time:** 11 a.m.      **Location:** West Salem Roth's IGA  
Santiam Rm.  
1130 Wallace Rd. NW  
Salem, OR

**Hearing Officer:** Jim Fairchild  
**Stat. Auth.:** ORS 183.310 – 813.500, 293.445, 670.310, 701.075, 701.145, 701.235, 701.280, 701.350, 701.355 & 701.992

**Stats. Implemented:** ORS 25.270, 25.785, 25.990, 87.005, 87.093, 445.080, 656.021, 656.029, 183.310, 183.500, 183.415, 183.460, 183.470, 192.430, 279.323, 701, 701.035, 701.055, 701.075, 701.085, 701.102, 701.105, 701.115, 701.125, 701.130, 701.135,



# NOTICES OF PROPOSED RULEMAKING

701.139, 701.140, 701.143, 701.145, 701.146, 701.147, 701.175, 701.227, 701.235, 701.250, 701.252, 701.280, 701.350, 701.355 & 701.992

**Proposed Adoptions:** 812-002-0001, 812-002-0275

**Proposed Amendments:** 812-001-0015, 812-002-0450, 812-002-0580, 812-002-0620, 812-003-0100, 812-003-0140, 812-003-0250, 812-003-0260, 812-004-0120, 812-004-0250, 812-004-0520, 812-004-0535, 812-004-0540, 812-004-0590, 812-005-0005, 812-006-0011, 812-006-0030

**Proposed Ren. & Amends:** 812-008-0080 to 812-008-0200, 812-008-0080(1) to 812-008-0202, 812-008-0080(2) to 812-008-0203, 812-008-0080(3) to 812-008-0204, 812-008-0080(4) to 812-008-0205, 812-008-0080(5) & (14) to 812-008-0206, 812-008-0080(6) to 812-008-0207, 812-008-0080(7) to 812-008-0208, 812-008-0080(8) to 812-008-0209, 812-008-0080(9) to 812-008-0210, 812-008-0080(10) to 812-008-0211, 812-008-0080(11) to 812-008-0212, 812-008-0080(12) to 812-008-0213, 812-008-0080(13) to 812-008-0214, 812-008-0080(15) to 812-008-0201

**Last Date for Comment:** 8-23-05, 11 a.m.

**Summary:** 812-002-0001 is adopted to define "applicant". 812-002-0275 is adopted to define "family members".

OAR 812-001-0015, 812-002-0450, 812-002-0580, 812-002-0620, 812-003-0100, 812-003-0250, 812-003-0260, 812-004-0120, and 812-006-0011, are amended to add and clarify limited partnerships and joint ventures and for general housekeeping amendments.

812-003-0140 is amended to reduce the license fee from \$295 to \$260 effective October 1, 2005.

812-004-0250 is amended to reflect amendments to 812-004-0540. 812-004-0520 is amended to add language allowing the agency, at its discretion, to hold an on-site meeting on a claim that has been filed in court, if the agency finds that the meeting is likely to assist the parties to resolve the dispute. 812-004-0535 is amended to a cite reference to reflect amendments to 812-004-0540. 812-004-0540 is amended allow the agency to issue a proposed order in the amount of the claim processing fee if respondent pays all of the damages due to the claimant after the fee is paid, but before the agency issues its order, this payment does not apply to payments by a respondent under a settlement agreement, and requires agency to notify respondent before issuing an order to reimburse the processing fee and to allow respondent 30 days to reimburse the fee. 812-004-0590 is amended to correct the site reference.

812-005-0005 is amended to correct the cite references.

812-006-0030 is amended to change the way CCB tracks test passing rates for purposes of education provider evaluation. Tracking only first time passing rates should provide more statistically valid data. The Training Education Advisory Committee (TEAC) recommended these proposed rule changes to correct problems with the current system of statistical reporting on education providers.

812-008-0080 is amended and renumbered to simplify and clarify language, correct cite references, combine some sections to streamline, and adds a new requirements in 812-008-0202. These changes were recommended by the Home Inspector Advisory Committee (HIAC).

**Rules Coordinator:** Catherine Dixon

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

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

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

Date:	Time:	Location:
8-15-05	10 a.m.-12 p.m.	Hearing Rm. 50 State Capitol Bldg. Salem, OR

**Hearing Officer:** Kathy Loretz

**Stat. Auth.:** ORS 243.061 – 243.302, ORS 279

**Stats. Implemented:** ORS 243, 659 & 743

**Proposed Amendments:** 101-002-0015, 101-010-0005, 101-015-0005, 101-020-0005, 101-020-0010, 101-020-0040, 101-020-0045, 101-030-0022, 101-030-0040, 101-040-0005, 101-040-0010, 101-040-0020, 101-040-0030, 101-040-0035, 101-040-0040, 101-040-0045, 101-040-0050, 101-040-0055, 101-040-0080, 101-050-0005, 101-050-0025

**Last Date for Comment:** 8-25-05

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

**Rules Coordinator:** Kristin Keith

**Address:** Department of Administrative Services, Public Employees' Benefit Board, 155 Cottage St. NE U90, Salem, OR 97301-3972

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

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

Date:	Time:	Location:
8-18-05	9:30 a.m.	1535 Edgewater St. NW Salem, OR 97309

**Hearing Officer:** Mike D. Ewert

**Stat. Auth.:** ORS 455.355

**Stats. Implemented:** ORS 455.355

**Proposed Adoptions:** 918-440-0510

**Last Date for Comment:** 8-19-05, 5 p.m.

**Summary:** This rulemaking implements the legislative intent of House Bill 3007 to reduce mercury entering the environment by prohibiting the installation of mercury thermostats in commercial and residential buildings. Additionally, these rules specify that persons violating the provisions of this rule are subject to civil penalty under ORS Chapter 455 and the rules adopted thereunder.

**Rules Coordinator:** Nicole M. Jantz

**Address:** Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309

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

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## Department of Consumer and Business Services, Division of Finance and Corporate Securities Chapter 441

Date:	Time:	Location:
8-23-05	9 a.m.	CR F 350 Winter St. NE Salem, OR

**Hearing Officer:** Patricia A. Locnikar

**Stat. Auth.:** ORS 705.620, 723.022, 723.102, 723.106, 723.116 & 723.532; Other Auth.:Ch. 916 OL 1989, Ch. 716 OL 1991

**Stats. Implemented:** ORS 723.022, 723.106, 723.114, 723.116, 723.152, 723.156, 723.172, 723.322, 723.512, 723.526, 723.532, 723.602 & 723.682

**Proposed Adoptions:** 441-720-0210

**Proposed Amendments:** 441-710-0000, 441-710-0020, 441-710-0070, 441-710-0075, 441-710-0240, 441-710-0260, 441-710-0270, 441-710-0325, 441-710-0400

**Proposed Repeals:** 441-710-0030, 441-710-0036, 441-710-0130, 441-710-0170, 441-710-0210, 441-710-0230, 441-710-0250, 441-710-0300, 441-710-0310, 441-710-0320, 441-710-0330, 441-720-0000, 441-720-0010, 441-720-0090

**Proposed Renumberings:** 441-710-0045 to 441-710-0460, 441-710-0090 to 441-710-0515, 441-710-0120 to 441-710-0530, 441-710-0160 to 441-720-0200

**Proposed Ren. & Amends:** 441-710-0010 to 441-710-0500, 441-710-0015 to 441-710-0505, 441-710-0038 to 441-710-0450, 441-



# NOTICES OF PROPOSED RULEMAKING

710-0080 to 441-710-0510, 441-710-0100 to 441-710-0520, 441-710-0110 to 441-710-0525, 441-710-0140 to 441-710-0535, 441-710-0180 to 441-720-0215, 441-710-0190 to 441-720-0220, 441-710-0200 to 441-720-0225, 441-710-0220 to 441-720-0230

**Last Date for Comment:** 8-23-05

**Summary:** These modifications to the credit union rules simplify some filing requirements, repeal unnecessary rules, make clarifications, and update rules based on powers equivalent to those granted to federal credit unions.

**Rules Coordinator:** Berri Leslie

**Address:** Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301

**Telephone:** (503) 947-7478

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**Stat. Auth.:** ORS 59.850, 59.855, 59.900, 97.933, 97.935, 646.386, 697.031, 717.240, 717.310, 725.185, 726.125 & 726.250

**Stats. Implemented:** ORS 59.845, 59.969, 97.933, 97.935, 646.396, 697.031, 717.240, 725.185, 726.125 & 726.250

**Proposed Amendments:** 441-730-0030, 441-740-0010, 441-745-0310, 441-810-0150, 441-830-0040, 441-860-0020, 441-930-0270

**Last Date for Comment:** 9-1-05

**Summary:** These amendments add a provision to each rule setting fees for certain non-depository financial services entities regulated by the director. The added provision would allow the director by order to reduce fees assessed in any program for any year or other licensing period.

**Rules Coordinator:** Berri Leslie

**Address:** Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301

**Telephone:** (503) 947-7478

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

Date:	Time:	Location:
9-30-05	9:30 a.m.	WCB Salem Office 2601 25th St. SE Suite 150 Salem, OR 97302-1280

**Hearing Officer:** Roger C. Pearson

**Stat. Auth.:** ORS 656.283, 656.726(5)

**Stats. Implemented:** ORS 183, ORS 656, ORS 656.283, 656.295, 656.724, 656.726(5)

**Proposed Amendments:** 438-006-0095

**Last Date for Comment:** 9-30-05

**Summary:** Amends OAR 438-006-0095 by adding provisions stating that, when an Administrative Law Judge (ALJ) disqualifies himself or herself from a proceeding under this rule, the ALJ is not required to disclose the reason(s) for the disqualification except as required by law and reasonable management inquiries for docket or case management purposes.

**Rules Coordinator:** Vicky Scott

**Address:** Department of Consumer and Business Services, Workers' Compensation Board, 2601 25th St. SE, Suite 150, Salem, OR 97302-1280

**Telephone:** (503) 378-3298

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## Department of Corrections Chapter 291

**Stat. Auth.:** ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075

**Stats. Implemented:** ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075

**Proposed Amendments:** 291-063-0030

**Last Date for Comment:** 9-5-05

**Summary:** These rule amendments are necessary to clarify that leave conditions for an inmate on short-term transitional leave will replicate or may hold an inmate to a higher standard than post-prison supervision conditions.

**Rules Coordinator:** Janet R. Worley

**Address:** Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667

**Telephone:** (503) 945-0933

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## Department of Forestry Chapter 629

Date:	Time:	Location:
8-17-05	10 a.m.-12 p.m.	The River House 3075 N. Business 97 Bend, OR 97701
8-18-05	10 a.m.-12 p.m.	NEO Interagency Fire Center 60131 Pierce Rd. LaGrande, OR 97754
8-22-05	10 a.m.-12 p.m.	Oregon Dept. of Forestry 5286 Table Rock Rd. Central Point, OR 97502
8-24-05	10 a.m.-12 p.m.	City of Forest Grove Power & Light Company 1818 B St. Forest Grove, OR 97116
8-26-05	10 a.m.-12 p.m.	Oregon Dept. of Forestry 3150 Main St. Springfield, OR 97478

**Hearing Officer:** Lanny Quackenbush

**Stat. Auth.:** ORS 527.710, ORS 527.630(3), 527.714 & 526.016(4)

**Stats. Implemented:** ORS 527.670(10),(11),(12) & 527.700(2), (5), (6), (8), (9)

**Proposed Adoptions:** 629-605-0173

**Proposed Amendments:** 629-001-0010, 629-001-0025, 629-600-0100, 629-605-0100, 629-605-0150, 629-605-0170, 629-605-0175, 629-605-0180, 629-605-0190, 629-605-0500, 629-610-0020, 629-610-0030, 629-610-0040, 629-610-0050, 629-610-0060, 629-610-0070, 629-610-0090, 629-615-0300, 629-623-0450, 629-623-0550, 629-623-0700, 629-625-0100, 629-625-0320, 629-625-0430, 629-630-0200, 629-630-0600, 629-630-0700, 629-630-0800, 629-635-0130, 629-640-0100, 629-640-0110, 629-640-0200, 629-640-0400, 629-645-0000, 629-645-0020, 629-645-0030, 629-645-0050, 629-650-0040, 629-660-0040, 629-660-0050, 629-665-0020, 629-665-0110, 629-665-0120, 629-665-0210, 629-665-0220, 629-665-0230, 629-665-0240, 629-670-0010, 629-670-0015, 629-670-0100, 629-670-0115, 629-670-0125, 629-670-0210, 629-672-0100, 629-672-0200, 629-672-0210, 629-672-0310, 629-674-0100

**Proposed Repeals:** 629-672-0220

**Last Date for Comment:** 9-14-05, 5 p.m.

**Summary:** The revision of the forest practice rules will comply with 2003 HB 3264 by removing requirements for prior approval and approval of written plans while maintaining resource protection. The revised rules effectively and efficiently implement the regulatory elements of the Forest Practices Act to maintain one-stop shopping and minimize program compliance costs.

Written comments regarding the proposed rules may be sent to Lanny Quackenbush, Oregon Department of Forestry, 2600 State Street, Salem, OR 97310, via e-mail lquackenbush@odf.state.or.us or via FAX 503-945-7490. Complete copies of the proposed rules (42 pp) are available via e-mail or hard copy; contact Gayle Birch at 503-945-7210 or gbirch@odf.state.or.us

**Rules Coordinator:** Gayle Birch

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

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

# NOTICES OF PROPOSED RULEMAKING

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

**Date:** 8-23-05      **Time:** 2 p.m.      **Location:** 500 Summer St. NE  
Rm. 456  
Salem, OR

**Hearing Officer:** Michael Hewitt  
**Stat. Auth.:** ORS 409.050 & OL 2001 c.900 §1 (4)  
**Stats. Implemented:** ORS 409, 411 & 418  
**Proposed Repeals:** 413-330-0070  
**Last Date for Comment:** 8-23-05, 5 p.m.  
**Summary:** 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. The repeal 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  
**Address:** Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E-03, Salem, OR 97301  
**Telephone:** (503) 945-5844

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

**Date:** 8-23-05      **Time:** 2 p.m.      **Location:** 500 Summer St. NE  
Rm. 456  
Salem, OR

**Hearing Officer:** Michael Hewitt  
**Stat. Auth.:** ORS 409.050 & OL 2001 c.900 §1 (4)  
**Stats. Implemented:** ORS 409 & 414  
**Proposed Repeals:** 410-003-0000, 410-003-0001, 410-003-0002, 410-003-0003  
**Last Date for Comment:** 8-23-05, 5 p.m.  
**Summary:** Rules 410-003-0000, 410-003-0001, 410-003-0002 and 410-003-0003 were adopted to establish contracting practices for businesses functioning as public bodies. The repeal of these rules is an administrative consistency measure due to the fact these rules expired December 31, 1978, yet remain in the public rules for Chapter 410.  
**Rules Coordinator:** Pat Bougher  
**Address:** Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E-03, Salem, OR 97301  
**Telephone:** (503) 945-5844

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

**Date:** 8-24-05      **Time:** 9:30 a.m.      **Location:** Portland State Office Bldg.  
Rm. 120B  
800 NE Oregon St.  
Portland, OR

**Hearing Officer:** Jana Fussell  
**Stat. Auth.:** ORS 409.615 – 409.623  
**Stats. Implemented:** ORS 409.615 – 409.623  
**Proposed Adoptions:** 333-002-0000 – 333-002-0090  
**Last Date for Comment:** 8-24-05, 5 p.m.  
**Summary:** These proposed rules establish procedures for the testing, qualification and certification of health care interpreters for persons with limited English proficiency. The Department will issue valid certificates to those applicants who meet the requirements for

Qualified or Certified Health Care Interpreters. A “Health Care Interpreter” means a person who is employed as an interpreter working in health care who is readily able to communicate with a person with limited English proficiency and to accurately translate the written or oral statements of the person with limited English proficiency into English, and who is readily able to translate the written or oral statements of other persons into the language of the person with limited English proficiency. Once certified, interpreters must renew certification annually. The Department may elect to maintain a central registry of certified interpreters statewide. Recognizing the wide range of experience and background of interpreters who would be eligible to apply for certification, these rules provide flexibility in the type of trainings that can be used to document the educational requirements. Certification as a health care interpreter through this rule is voluntary.

**Rules Coordinator:** Christina Hartman  
**Address:** Department of Human Services, Public Health, 800 NE Oregon St., Suite 930, Portland, OR 97232  
**Telephone:** (503) 731-4405

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

**Date:** 8-30-05      **Time:** 10 a.m.      **Location:** 500 Summer St. NE  
Rm. 257  
Salem, OR

**Hearing Officer:** Annette Tesch  
**Stat. Auth.:** ORS 181.537, 183.341, 411.060, 411.070, 411.117, 411.122, 411.816, 411.825, 414.042, 418.040 & 418.100; Other Auth: Oregon’s Health Insurance Flexibility and Accountability (HIFA)/Section 1115 demonstration, ORS 411.117, 7 CFR 273.1, 7 CFR 273.18(a), 7 CFR 273.11(e)(6) & (f)(6), 7 CFR 271.2, 45 CFR 260.58 & 45 CFR 460.52  
**Stats. Implemented:** ORS 181.537, 183.341, 411.060, 411.070, 411.105, 411.117, 411.122, 411.320, 411.335, 411.630, 411.635, 411.816, 414.042, 418.100 & Ch. 859, OL 1999  
**Proposed Adoptions:** 461-135-1185, 461-135-1186, 461-135-1187  
**Proposed Amendments:** 461-001-0000, 461-001-0010, 461-105-0010, 461-105-0060, 461-110-0110, 461-110-0115, 461-110-0370, 461-115-0071, 461-120-0120, 461-120-0125, 461-125-0370, 461-130-0310, 461-135-0010, 461-135-0475, 461-135-0725, 461-135-1100, 461-135-1200, 461-135-1205, 461-140-0220, 461-140-0296, 461-145-0020, 461-145-0080, 461-145-0330, 461-145-0340, 461-145-0930, 461-155-0190, 461-160-0040, 461-160-0070, 461-160-0420, 461-160-0430, 461-160-0610, 461-160-0620, 461-165-0180, 461-165-0410, 461-170-0020, 461-170-0030, 461-170-0103, 461-185-0050, 461-190-0161, 461-193-1200, 461-195-0501, 461-195-0541, 461-195-0611, 461-195-0621

**Last Date for Comment:** 8-30-05  
**Summary:** Rule 461-001-0000 is being amended to clarify references to Divisions and agencies.

Rule 461-001-0010 is being amended to clarify that technical rule changes covered by ORS 183.335(7) and (12) are not subject to the notice rule and that rule notices must be sent to legislators in compliance with ORS 183.335(12). It is also being amended to update references to the former Adult and Family Services Division and update incorporation of Model Rules to adopted 2004 rules and delete incorporation of model rules on rulemaking format, limitation of economic effect on business, and periodic rule review. It is also being amended to permit sending notices by e-mail starting January 1, 2006 consistent with HB 2204.

Rule 461-105-0010 is being amended to clarify the relationship between this rule and related rules about confidentiality and service requirements.

Rule 461-105-0060 is being amended to provide a clearer basis in rule for the Department to not share information about one member

## NOTICES OF PROPOSED RULEMAKING

of a benefit group with another member of a benefit group where the information is not relevant to the benefit level of the member seeking the information. This rule is also being amended to remove the appearance of a mandate for the Department to charge a fee for clients to obtain their own records and to set out limited circumstances under which a fee would be permissible.

Rule 461-110-0110 is being amended to clarify the definition of disabled for the Food Stamp program.

Rule 461-110-0115 is being amended to incorporate new definitions used in determining eligibility for the OSIP-EPD and OSIPM-EPD programs.

Rules 461-110-0370, 461-155-0190, and 461-160-0430 are being amended to reflect the annual increase in the standards for the Food Stamp program as published by the Food and Nutrition Service. In addition, rule 461-110-0370 is being amended to maintain consistency with amendments being made to rule 461-145-0340, Lodger Income.

Rule 461-115-0071 is being amended to clarify existing policy regarding who must sign the application in the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee (REF), Refugee Medical (REFM), and Temporary Assistance to Needy Families (TANF) programs. The rule is amended to reflect that all parental caretaker relatives must sign the application.

Rules 461-120-0120 and 461-120-0125 are being amended to remove the references to the specific types of visas certain family members of victims of trafficking will be issued.

Rule 461-125-0370 is being amended to clarify the process used to determine if an individual is disabled when determining eligibility for the OSIP-EPD and OSIPM-EPD programs.

Rule 461-130-0310 is being amended to clarify that parents who receive TANF for their children, and are in the TANF filing group but not in the TANF benefit group, are mandatory for JOBS participation unless they are otherwise exempt from JOBS disqualification.

Rule 461-135-0010 is being amended to indicate that OSIP-EPD and OSIPM-EPD clients are not assumed eligible.

Rule 461-135-0475 is being amended to remove an obsolete reference to "pay after performance" in section (2) of the rule.

Rule 461-135-0725 is being amended to indicate that OSIP-EPD and OSIPM-EPD clients are not assumed eligible.

Rule 461-135-1100 is being amended to clarify the uninsured requirements of the Oregon Health Plan (OHP). The rule is amended to clarify that the Kaiser Child Health program is not considered private major medical health insurance for the purposes of this rule.

Rule 461-135-1185 is being adopted to provide a definition for the Low-Income Subsidy (LIS) program.

Rule 461-135-1186 is being adopted to set out the requirements for a completed Low-Income Subsidy (LIS) application.

Rule 461-135-1187 is being adopted to incorporate the federal regulations that apply to Low-Income Subsidy (LIS) applications, eligibility determinations, and redeterminations. It sets a time frame for providing a decision notice to an applicant. It sets out the appeal process for adverse decision notices.

Rule 461-135-1200 is being amended to clarify residency requirement for victims of domestic violence as outlined in TANF rule 461-120-0010 and to clarify that for victims of domestic violence there is no "intent to remain in Oregon". Other changes to rule 461-135-1200 are reordering and formatting changes that do not change current policy or intent.

Rule 461-135-1205 is being amended to include the "case plan" in the intent statement for the TA-DVS program.

Rules 461-140-0220 and 461-140-0296 are being amended because the Department's treatment of annuities is changing effective October 1, 2005. Therefore, this provision only applies to annuities purchased on or before September 30, 2005.

Rule 461-145-0020 is being amended to specify that for annuities purchased on or after October 1, 2005, the annuity is counted as a resource unless it meets specified criteria.

Rule 461-145-0080 is being amended to cross-reference policy on food stamp treatment of child support payments made to a third party.

Rule 461-145-0330 is being amended to change the requirements for loan documentation in the Oregon Health Plan (OHP) program. The rule is amended to reflect that in the OHP program loan agreements can be either written or oral.

Rule 461-145-0340 is being amended to clearly define what a lodger is and how the Food Stamp program treats lodger income. The amendment is also reflected by the change in OAR 461-110-0370(1)(c)(A).

Rule 461-145-0930 is being amended to clarify existing policy regarding self-employment exclusions in the Oregon Health Plan (OHP) program. The rule is amended to reflect that the total exclusion for self-employment costs cannot exceed the gross self-employment income for the month that the exclusion is taken.

Rule 461-160-0040 is being amended because there is a reference in section (4) to an OAR that has been repealed.

Rule 461-160-0070 is being amended to specify the rounding process for Food Stamps and TANF if the proration for partial month benefits is not a whole dollar amount.

Rule 461-160-0420 is being amended to reflect the annual change in the Standard Utility Allowances. Each year Oregon surveys utility companies and the general public about increases in utility costs. The utility allowances are derived from these surveys and approved by the Food and Nutrition Service in the Food Stamp Program State Plan. There are three utility allowances. The full utility allowance (FUA) is for those households that have heating and cooling costs. The limited utility allowance (LUA) is for those households with more than one non-heating/cooling utility cost. The Single utility allowance (TUA) is for those households with only one utility non-heating/cooling cost. This is most commonly a telephone.

Rule 461-160-0430 is also being amended to remove a reference to JOBS Plus wages and to correct policy on which food stamp cases receive an unlimited shelter deduction. This rule is also being amended to make the annual federal increase in the maximum shelter deduction for food stamp households from its current level of \$388.

Rules 461-160-0610, 461-160-0620 and 461-185-0050 are being amended to exempt the following protected Medicaid groups from applying their income toward the cost of home and community based and institutional care: 1) Individuals who became ineligible for cash assistance as a result of a Social Security cost of living increase after April, 1977 (42 CFR 435.135); 2) Disabled widows and widowers who would be eligible for Supplemental Security Income except for the increase in disability benefits (42 CFR 425.137); 3) Disabled widow and widowers aged 60 through age 64 who would be eligible for Supplemental Security Income except for the receipt of early retirement Social Security Income (42 CFR 435.138). These rules are also amended to state that disabled individuals who are at least age 18 and were receiving Supplemental Security Income based on blindness or disability determined before age 22 and began receiving children's Social Security benefits under Section 202 (d) of the Social Security Act (Section 6 of P.L. 99-643) are exempt from applying their income toward the cost of home and community based.

Rule 461-165-0180 is being amended to clarify the relationship between the Department Criminal History Check rules (OAR 410-007-0280 and 461-165-0420) and the requirements to be eligible for payment as a child care provider.

Rule 461-165-0410 is being amended to clarify the approach to preliminary and final fitness determinations for child care providers in the context of OAR 410-007-0280 and 461-165-0420.

Rule 461-170-0020 is being amended to remove the requirement that clients receiving FS, MAA, MAF and TANF report a change in rate of pay or a change in the number of hours greater than five and to add the requirement to report a change in earned income of more than \$100. In addition, the rule is being amended to reflect that MAA, MAF and TANF clients must report a change in household group and a change in who pays the shelter costs. The rule is also being amended to remove the requirement that MAA, MAF and



# NOTICES OF PROPOSED RULEMAKING

TANF clients report a change in filing group members, a change in the obligation to pay child support and noncompliance with the OFSET program. In addition SAC is being added to the reporting requirements of this rule.

Rule 461-170-0030 is being amended to exclude Extended Medical (EXT) and Substitute Adoptive Care (SAC) from the reporting requirements of the rule.

Rule 461-170-0103 is being amended to correct policy on acting on client changes for food stamp cases in the Semi-Annual Reporting System.

Rule 461-190-0161 is being amended because changes in other programs over the last several years have necessitated changes to the work supplementation activity of the JOBS program.

Rule 461-193-1200 is being amended to remove the requirement of a refugee to submit a copy of their Social Security Number to their case manager.

Rules 461-195-0501 and 461-195-0541 are being amended to expand the list of who is liable for repayment of a food stamp overpayment and conform to federal regulations. This amendment adds the authorized representative and non citizen sponsor to the list of individuals who are liable. In addition, trafficking is introduced per federal law.

Rule 461-195-0611 is being amended to add the child care program to the list of programs which can have an intentional program violation as established by a state or federal court, by an administrative agency in a contested case, or by a person signing the designated form for acknowledging the violation.

Rule 461-195-0621 is being amended to change the disqualification for an intentional program violation in the child care program from a permanent disqualification to a six-month disqualification for the first offense.

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

**Rules Coordinator:** Annette Tesch

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

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

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## Department of Justice Chapter 137

**Stat. Auth.:** ORS 18.225, 25.080, 25.125, 25.260, 25.610, 25.625, 180.345, 293 & 416.455

**Stats. Implemented:** ORS 18.225 – 238, 18.400, 18.645, 25.020, 25.080, 25.125, 25.150, 25.260, 25.287, 25.387, 25.414, 25.610, 25.625, 25.650, 107.135, 127.005, 411.320, 416.415, 416.417, 416.422, 416.425, 418.032 & 418.042

**Proposed Adoptions:** 137-055-6021, 137-055-6022, 137-055-6023, 137-055-6024

**Proposed Amendments:** 137-055-1100, 137-055-1120, 137-055-1140, 137-055-1160, 137-055-3410, 137-055-3430, 137-055-3480, 137-055-4540, 137-055-4560, 137-055-5060, 137-055-5220, 137-055-6020, 137-055-6120, 137-055-6210, 137-055-6220

**Last Date for Comment:** 9-23-05

**Summary:** OARs 137-055-6021, 6022, 6023 and 6024 are being adopted and OAR 137-055-6020 is being amended in order to separate the different sections of distribution for ease in reading, clarify in rule the policy that we will distribute money as instructed by the state(s), and in arrears only cases, we will not issue checks for under \$5. The amendments to: OAR 137-055-1100 is a cite change; OAR 137-055-1120 replaces an applicant for services with the federal term recipient of services and adds that a case may be closed when the custodial parent is deceased and no request to collect arrears has been received; OAR 137-055-1140 adds that location information of the child, such as daycare information may not be disclosed outside of a legal proceeding; OAR 137-055-1160 provides specific cite information; OAR 137-055-3410 exempts the situation of adding a subsequent child of the same parties to an existing order

from this rule; OAR 137-055-3430 exempts adding a subsequent child of the parties to an existing order from having to meet the substantial compliance requirements and adds the clarification that the administrator may initiate a modification proceeding under this rule; OAR 137-055-3480 adds that an order may be modified to zero when a subsequent child is added to another existing order; OAR 137-055-4540 provides for an agreement pursuant to a hardship exception request; OAR 137-055-4560 amends the rule so that required information will be sent to consumer reporting agencies in the currently required format; OAR 137-055-5060 states that billing will not occur when the total amount due is less than five dollars; OAR 137-055-5220 amends the rule to reflect current law mandating notarized signatures on "satisfactions of support awards"; OAR 137-055-6120 is a cite change; OAR 137-055-6210 clarifies that a tax offset refund which has been reclaimed by the IRS or DOR but already distributed to the obligee will be considered an advance payment when arrears exist on the case; OAR 137-055-6220 clarifies that a tax offset refund which has been reclaimed by the IRS or DOR but already distributed to the obligee will be considered an overpayment when it does not qualify as an advance payment.

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

**Rules Coordinator:** Shawn Irish

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

**Telephone:** (503) 986-6240

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## Department of Oregon State Police Chapter 257

**Stat. Auth.:** ORS 181.560(4) & 181.533(9)(b)

**Stats. Implemented:** ORS 181.560(4) & 181.533(9)(b)

**Proposed Amendments:** 257-010-0025, 257-010-0035

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

**Summary:** 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; 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

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

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

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## Department of Public Safety Standards and Training Chapter 259

**Stat. Auth.:** ORS 243.950 & 243.956

**Stats. Implemented:** ORS 243.950 & 243.956

**Proposed Amendments:** 259-070-0001, 259-070-0005, 259-070-0010, 259-070-0020, 259-070-0050

**Proposed Repeals:** 259-070-0015, 259-070-0030, 259-070-0040

**Last Date for Comment:** 8-23-05

**Summary:** Housekeeping changes to bring the administrative rule into compliance with legislation. Adds new language related to qualifying death or job-related permanent total disability. Adds new lan-



# NOTICES OF PROPOSED RULEMAKING

guage related to benefit provisions and includes transition process for current beneficiaries.

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

**Rules Coordinator:** Bonnie Salle

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

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

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

**Stat. Auth.:** ORS 184.616, 184.619, 801.402, 802.010, 803.097 & Ch. 261, OL 2005 (HB 2017)

**Stats. Implemented:** ORS 801.402 & 803.097

**Proposed Amendments:** 735-020-0015

**Last Date for Comment:** 8-22-05

**Summary:** The amendment of this rule is necessitated by legislation passed during the 2005 Legislative Assembly to coincide with amendments to Federal bankruptcy law. Effective October 17, 2005, Chapter 261, Oregon Laws 2005 (HB 2017) amends ORS 803.100 and 803.136. The amendments extend the period for submission of the paperwork necessary to perfect a security interest on a newly purchased vehicle from 20 days to 30 days. Under current law, an application for a security interest including evidence of ownership, or a transitional ownership document, as described in ORS 803.130, must be submitted within 20 days of the date the vehicle is sold or the security interest is created in order to protect the security interest in a bankruptcy action. Effective October 17, 2005, the federal Bankruptcy Abuse Prevention & Consumer Protection Act of 2005, Public Law 109-8, extends this period from 20 days to 30 days. HB 2017 amends ORS 803.100 and 803.136 to make Oregon law consistent with federal law. The amendment to the rule simply changes "20 days" to "30 days" in section 2.

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

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**Stat. Auth.:** ORS 184.616, 184.619 & 802.010; Other Auth.: 49 CFR § 383.3

**Stats. Implemented:** ORS 807.020

**Proposed Adoptions:** 735-062-0003

**Last Date for Comment:** 8-22-05

**Summary:** In compliance with the requirements of 49 CFR 383.3(c), ORS 807.020 exempts certain military drivers from the requirement to have an Oregon driver license or permit when the driver operates an official motor vehicle in the course of the person's duties in the Armed Forces. A recent audit of Oregon's commercial driver license program by the Federal Motor Carrier Safety Administration (FMCSA) expressed concern that the term "official motor vehicle" could be misinterpreted if not further defined by administrative rule. This rule defines that term.

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

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## Department of Transportation, Highway Division Chapter 734

**Stat. Auth.:** ORS 184.616, 184.619 & 815.045

**Stats. Implemented:** ORS 815.045, 815.140, 815.145 & 815.165

**Proposed Amendments:** 734-017-0005, 734-017-0010, 734-017-0012, 734-017-0020

**Last Date for Comment:** 8-22-05

**Summary:** These rules establish requirements for use of chains and traction tires. The proposed amendments clarify the chain requirement for RVs and other medium duty vehicles (vehicles with a gross vehicle weight rating of more than 10,000 pounds but less than 26,000 pounds); correct inconsistencies between the rule and the referenced Exhibit 1, "Minimum Chains Required"; exempt certain utility company vehicles when providing emergency response to restore service; and clarify the effect of Division 17 rules on motorcycles.

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

**Rules Coordinator:** Brenda Trump

**Address:** Department of Transportation, Highway Division, 1905 Lana Ave. NE, Salem, OR 97314

**Telephone:** (503) 945-5278

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**Stat. Auth.:** ORS 184.616, 184.619, 810.050 & 810.060

**Stats. Implemented:** ORS 818.100, 818.200 & 818.220

**Proposed Amendments:** 734-082-0030

**Last Date for Comment:** 8-22-05

**Summary:** OAR 734-082-0030 addresses allowable rear overhang for loads on combinations of vehicles in operation without a variance permit. The proposed amendment is necessary to allow the Administrator of the Motor Carrier Transportation Division to determine when a load with rear overhang that exceeds the current limits in OAR 734-082-0030 may be approved to operate over Oregon highways. Approval will be granted if the Administrator determines the movement is in the public interest and can be done safely. This proposed permanent amendment is currently effective as a temporary amendment.

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

**Rules Coordinator:** Brenda Trump

**Address:** Department of Transportation, Highway Division, 1905 Lana Ave. NE, Salem, OR 97314

**Telephone:** (503) 945-5278

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**Stat. Auth.:** ORS 184.616, 184.619, 374.310, 374.312, 374.313 & 374.345

**Stats. Implemented:** ORS 374.305 - 374.345 & 374.990

**Proposed Amendments:** 734-051-0040, 734-051-0115, 734-051-0500, 734-051-0510, 734-051-0520, 734-051-0530, 734-051-0540, 734-051-0560

**Last Date for Comment:** 8-22-05

**Summary:** OAR 734-051-0115: The proposal is to change the spacing standards in Tables 2, 3 and 4 adopted by reference in OAR 734-051-0115(2). This change combines two categories, Urban/Other and Urban/UBA (Urban Business Area), into one category called Urban. The access spacing standards specified for the new Urban category are the same as those currently listed under the Urban/Other category, except for speeds less than 35 mph. For these lower speeds, the new Urban category uses the spacing standards currently listed under the Urban/UBA category. This change implements proposed amendments to the 1999 Oregon Highway Plan, which will be considered by the Oregon Transportation Commission at its August meeting. The proposal also amends OAR 734-051-0115(2) by moving a part of the existing definition of "Urban" in 734-051-0040(66) to 734-051-0115(2). This change does not establish new authority for the Regional Access Management Engineers, but simply relocates the language defining existing authority to a more appropriate section of the rule.

OAR 734-051-0040: The proposal is to amend the definitions in OAR 734-051-0040(4) of Access Management Plan and OAR 734-051-0040(34) of Interchange Area Management Plan to clarify that these are planning documents and are not highway projects. The pro-

# NOTICES OF PROPOSED RULEMAKING

posals also amends the definitions of OAR 734-051-0040(66) 'Urban', OAR 734-051-0040 (31) 'Infill' and OAR 734-051-0040 (52) 'Redevelopment', to clarify the process for permitting approaches in rural areas that have certain urban characteristics.

OAR 734-051-0500 through 0540 and 0560: These proposed changes to these rules are made to correct a clerical error. OAR 734-051-0400 was renumbered to 734-051-0355 in a previous rule change adopted March 1, 2004. The proposed changes provide the correct reference.

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

**Rules Coordinator:** Brenda Trump

**Address:** Department of Transportation, Highway Division, 1905 Lana Ave. NE, Salem, OR 97314

**Telephone:** (503) 945-5278

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-7-05	10 a.m.–12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Katie Hilton

**Stat. Auth.:** ORS 471, 471.030 & 471.730

**Stats. Implemented:** ORS 471.430

**Proposed Amendments:** 845-006-0335

**Last Date for Comment:** 9-21-05

**Summary:** This rule describes a variety of agency requirements regarding age verification and activities of minors on licensed premises. We need to amend this rule to specify the type of entertainment which is addressed by an underlying statute which establishes a process whereby juveniles may obtain court permission to perform on licensed premises. We also intend to add rule language describing a new process whereby premises which employ juvenile entertainers to perform activities not addressed by ORS 167.840(2) may obtain Commission approval for those juveniles to entertain.

**Rules Coordinator:** Katie Hilton

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

**Telephone:** (503) 872-5004

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-30-05	10 a.m.–12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Katie Hilton

**Stat. Auth.:** ORS 471, 471.030, 471.740 & 471.730(1)&(5)

**Stats. Implemented:** ORS 471.313

**Proposed Amendments:** 845-005-0306

**Last Date for Comment:** 9-13-05

**Summary:** This rule describes procedures for giving public notice of license applications. Section (4) of the rule describes a process that no longer exists, therefore we intend to amend the rule to remove section (4).

**Rules Coordinator:** Katie Hilton

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

**Telephone:** (503) 872-5004

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-23-05	10 a.m.–12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Katie Hilton

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

**Stats. Implemented:** ORS 471.760

**Proposed Amendments:** 845-004-0120

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

**Summary:** This rule describes the circumstances under which Commission staff may issue subpoenas and administer oaths. We intend

to amend the rule to specifically include videotape and other forms of media as "records" the Commission may subpoena under this rule.

**Rules Coordinator:** Katie Hilton

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

**Telephone:** (503) 872-5004

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## **Oregon Patient Safety Commission Chapter 325**

**Stat. Auth.:** ORS 442.820

**Stats. Implemented:** ORS 183.341(4); Other Auth.: Sec. 9 Ch. 686 OL 2003

**Proposed Adoptions:** 325-001-0001

**Last Date for Comment:** 9-13-05

**Summary:** This rule establishes the procedures to give interested persons a reasonable opportunity to be notified of the Patient Safety Commission's intention to adopt, amend or repeal a rule.

**Rules Coordinator:** James C. Dameron

**Address:** Oregon Patient Safety Commission, 800 NE Oregon St., Portland, OR 97232

**Telephone:** (503) 731-4017

\*\*\*\*\*

## **Oregon Student Assistance Commission Chapter 575**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-16-05	9:30 a.m.	155 Cottage St. NE Rm. A Salem, OR 97301

**Hearing Officer:** Brian Clem, Commission Chair

**Stat. Auth.:** ORS 348

**Stats. Implemented:** ORS 348.180, 348.205, 348.250 & 348.260

**Proposed Amendments:** 575-030-0005, 575-031-0020, 575-031-0025

**Last Date for Comment:** 9-16-05

**Summary:** The Oregon Administrative Rule revisions the Oregon Student Assistance Commission is proposing would add a definition of "part-time enrollment" and make corresponding changes that extend the Oregon Opportunity Grant to eligible students who are enrolled part time. Rules regarding grant awards will also be amended to clarify that part-time students will receive 50% of award amounts for full-time students.

**Rules Coordinator:** Tracy Richardson

**Address:** Oregon Student Assistance Commission, 1500 Valley River Dr., Suite 100, Eugene, OR 97401

**Telephone:** (541) 687-7443

\*\*\*\*\*

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-16-05	9:30 a.m.	155 Cottage St. NE Rm. A Salem, OR 97301

**Hearing Officer:** Brian Clem, Commission Chair

**Stat. Auth.:** ORS 348

**Stats. Implemented:** ORS 348.180, 348.205, 348.250 & 348.260

**Proposed Amendments:** 575-030-0005

**Last Date for Comment:** 9-16-05

**Summary:** The Oregon Administrative Rule revisions that the Oregon Student Assistance Commission is proposing would extend the definition of "resident of Oregon" to include students who are enrolled members of federally recognized tribes of Oregon or who are enrolled members of a Native American tribe which had traditional and customary tribal boundaries that included parts of the state of Oregon or which had ceded or reserved lands within the state of Oregon, regardless of the state of residency, and specify appropriate documentation of a student's tribal membership.

**Rules Coordinator:** Tracy Richardson

# NOTICES OF PROPOSED RULEMAKING

**Address:** Oregon Student Assistance Commission, 1500 Valley River Dr., Suite 100, Eugene, OR 97401  
**Telephone:** (541) 687-7443

\*\*\*\*\*

Date:	Time:	Location:
9-16-05	9:30 a.m.	155 Cottage St. NE Rm. A Salem, OR 97301

**Hearing Officer:** Brian Clem, Commission Chair

**Stat. Auth.:** ORS 348

**Stats. Implemented:** ORS 348.180, 348.205, 348.250 & 348.260

**Proposed Amendments:** 575-001-0015, 575-031-0010

**Last Date for Comment:** 9-16-05

**Summary:** The Oregon Administrative Rule revisions the Oregon Student Assistance Commission is proposing would define eligibility requirements for the Oregon Opportunity Grant more narrowly than is currently the case.

The amendment(s) to OAR 575-001-0015 removes the language from the temporary rule, which provides for a new appeal process for applicants who are denied an Oregon Opportunity Grant due to their ineligibility for a Federal Pell Grant, and restores language that previously appeared in OAR 575-001-0015.

The amendment(s) to OAR 575-031-0010 amends current rules that define "financial need," for purposes of determining an applicant's eligibility for an Oregon Opportunity Grant. The amendment removes the language in subsection (1) that provides for an appeal process. It also amends subsection (2) by retaining language from the temporary rule but providing for an exception for certain dependent students.

**Rules Coordinator:** Tracy Richardson

**Address:** Oregon Student Assistance Commission, 1500 Valley River Dr., Suite 100, Eugene, OR 97401  
**Telephone:** (541) 687-7443

\*\*\*\*\*

Date:	Time:	Location:
9-16-05	9:30 a.m.	155 Cottage St. NE Rm. A Salem, OR 97301

**Hearing Officer:** Brian Clem, Commission Chair

**Stat. Auth.:** ORS 348

**Stats. Implemented:**

**Proposed Repeals:** 575-040-0005, 575-040-0010, 575-040-0015, 575-040-0020, 575-040-0025, 575-040-0035, 575-040-0040, 575-040-0041, 575-040-0045, 575-040-0055, 575-040-0065, 575-040-0075

**Last Date for Comment:** 9-16-05

**Summary:** Repeals rules related to the Oregon Student Assistance Commission Loan Program. Oregon Student Assistance Commission no longer serves as a student loan guarantor in the Federal Family Education Loan Program.

**Rules Coordinator:** Tracy Richardson

**Address:** Oregon Student Assistance Commission, 1500 Valley River Dr., Suite 100, Eugene, OR 97401  
**Telephone:** (541) 687-7443

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## Oregon Student Assistance Commission, Office of Degree Authorization Chapter 583

Date:	Time:	Location:
9-16-05	9:30 a.m.	155 Cottage St. NE Rm. A Salem, OR 97301

**Hearing Officer:** Brian Clem, Commission Chair

**Stat. Auth.:** ORS 348.594 - 348.615 & 2005 SB 1039 Enrolled

**Stats. Implemented:** ORS 348.594 - 348.615

**Proposed Adoptions:** Rules in 583-030

**Last Date for Comment:** 9-16-05

**Summary:** Replaces ODA degree program approval rules (using the same 030 principal section number as current rules) to conform to changes required by SB 1039 (2005 Laws\_\_\_) and to make other technical and substantive corrections and improvements. Principal changes relate to state regulation of religious degree-granting institutions. Other changes relate to definitions, requirements for different levels of degrees, oversight of schools, fees and related matters affecting the application and approval process.

**Rules Coordinator:** Tracy Richardson

**Address:** Student Assistance Commission, Office of Degree Authorization, 1500 Valley River Dr., Suite 100, Eugene, OR 97401

**Telephone:** (541) 687-7443

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Date:	Time:	Location:
9-16-05	9:30 a.m.	155 Cottage St. NE Rm. A Salem, OR 97301

**Hearing Officer:** Brian Clem, Commission Chair

**Stat. Auth.:** ORS 348.609 & 2005 SB 1039 Enrolled

**Stats. Implemented:** ORS 348.609

**Proposed Amendments:** Rules in 583-050

**Last Date for Comment:** 9-16-05

**Summary:** Amends rules to conform to changes required by SB 1039 (2005 Laws\_\_\_). Changes relate to the conditions under which degrees issued by unaccredited entities can be used as credentials. New rules will allow use of certain such degrees with appended disclaimer.

**Rules Coordinator:** Tracy Richardson

**Address:** Student Assistance Commission, Office of Degree Authorization, 1500 Valley River Dr., Suite 100, Eugene, OR 97401

**Telephone:** (541) 687-7443

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## Oregon University System, Eastern Oregon University Chapter 579

Date:	Time:	Location:
8-24-05	11 a.m.	Hoke Main Lounge Eastern Oregon University La Grande, OR

**Hearing Officer:** Marv Wigle

**Stat. Auth.:** ORS 351, 351.070 & 352.360

**Stats. Implemented:** ORS 351.070 & 352.060

**Proposed Amendments:** 579-070-0005, 579-070-0010, 579-070-0015, 579-070-0030, 579-070-0035, 579-070-0041, 579-070-0042, 579-070-0043, 579-070-0045

**Last Date for Comment:** 8-23-05

**Summary:** The proposed amendments to OAR 579-070-0005, Parking and Vehicular Traffic Regulations, are to accommodate changing needs brought on by the growth of the University over the last decade. The proposed changes reflect current nomenclature and practices in implementing the University's parking and traffic regulations.

**Rules Coordinator:** Marvin L. Wigle

**Address:** Oregon University System, Eastern Oregon University, One University Blvd., La Grande, OR 97850

**Telephone:** (541) 962-3368

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## Oregon University System, Portland State University Chapter 577

**Stat. Auth.:** ORS 351.070  
**Stats. Implemented:** ORS 352.360  
**Proposed Amendments:** 577-060-0020

**Last Date for Comment:** 9-1-05

**Summary:** The proposed amendment establishes additional fees, charges, fines and deposits for General Services for the 2005-2006 fiscal year.

**Rules Coordinator:** Ellen DeVries



# NOTICES OF PROPOSED RULEMAKING

**Address:** Oregon University System, Portland State University, Portland State University, Office of Business Affairs, PO Box 751, Portland, OR 97207-0751

**Telephone:** (503) 725-3443

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

**Stat. Auth.:** ORS 420A.025

**Stats. Implemented:** ORS 179.471, 179.473, 179.478, 420.500, 420.505 & 420.525; Other Auth.: HB 2141

**Proposed Adoptions:** 416-425-0000, 416-425-0010, 426-425-0020

**Last Date for Comment:** 9-1-05

**Summary:** The Oregon Youth Authority temporarily adopted rules in order to implement HB 2141 (2005) relating to the assignment and transfer of OYA offenders, including offenders in the legal custody of the Department of Corrections (DOC) or other agencies who are placed in OYA physical custody, to a state mental hospital listed in ORS 426.010 or a facility designated by the Department of Human Services (DHS) for evaluation and treatment. This notice is for permanent rulemaking of those temporary rules.

**Rules Coordinator:** Kimberly Walker

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

**Telephone:** (503) 378-3864

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**Stat. Auth.:** ORS 420A.025

**Stats. Implemented:** ORS 419C.495, 420.011, 420.014 & 420.019

**Proposed Amendments:** 416-410-0000, 416-410-0010, 416-410-0020, 416-410-0030, 416-410-0050, 416-410-0060

**Proposed Repeals:** 416-410-0070

**Last Date for Comment:** 9-1-05

**Summary:** OAR Chapter 416, Division 410 will be renamed to "Close Custody Population" and the amendments of OAR 416-410-0000, OAR 416-410-0010, OAR 416-410-0020, OAR 416-410-0030, OAR 416-410-0050, and OAR 416-410-0060 will incorporate language from other rules within this Chapter that more closely belong under close custody population. These amendments will clarify admission criteria for offenders to close custody, including the designation of Public Safety Reserve (PSR) beds and county bed allocations. OAR 416-410-0070 will be repealed in its entirety.

**Rules Coordinator:** Kimberly Walker

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

**Telephone:** (503) 378-3864

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**Stat. Auth.:** ORS 420A.025

**Stats. Implemented:** ORS 420.011, 420A.010 & 420A.014

**Proposed Amendments:** 416-430-0000, 416-430-0010, 416-430-0020, 416-430-0025, 416-430-0030, 416-430-0050

**Last Date for Comment:** 9-1-05

**Summary:** These rules are being amended to change the title to "Sensitive Case Descriptors" and to amend OAR 416-430-0000, OAR 416-430-0010, OAR 416-430-0020, OAR 416-430-0025, OAR 416-430-0030, and OAR 416-430-0050. These rules will include information from other divisions which are pertinent to this topic. These rules will define the process by which sensitive case descriptors will be attached and removed from an offender's case file.

**Rules Coordinator:** Kimberly Walker

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

**Telephone:** (503) 378-3864

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**Stat. Auth.:** ORS 420A.025

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

**Proposed Amendments:** 416-300-0000, 416-300-0010, 416-300-0020, 416-300-0030, 416-300-0040, 416-300-0050, 416-300-0060, 416-300-0080, 416-300-0090

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

**Last Date for Comment:** 9-1-05

**Summary:** OAR Chapter 416, Division 300 will be amended for the following reasons: The Purpose of these rules will be changed to accurately reflect the Oregon Youth Authority's position as it relates to offenders on conditional release status in the community; definitions will be revised and updated; rule titles will change to more accurately describe their intent; parole status and revocation will be revised and changed to more concisely define the due process requirements for revocation. Interested persons may request a copy of the current rule from Kimberly Walker, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.

**Rules Coordinator:** Kimberly Walker

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

**Telephone:** (503) 378-3864

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**Stat. Auth.:** ORS 420A.025

**Stats. Implemented:**

**Proposed Repeals:** 416-120-0000, 416-120-0010 416-120-0020

**Last Date for Comment:** 9-1-05

**Summary:** OYA is repealing OAR Division 120 in its entirety. Language in the previously noticed draft rule is covered by statute. Further clarification of statute language will be accomplished in agency policy. Interested persons may request a copy of the current rule from Kimberly Walker, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.

**Rules Coordinator:** Kimberly Walker

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

**Telephone:** (503) 378-3864

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**Racing Commission**  
**Chapter 462**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-15-05	10 a.m.	Rm. 140 800 NE Oregon St. Portland, OR

**Hearing Officer:** Stephen S. Walters, Commissioners

**Stat. Auth.:** ORS 462.270(3)

**Stats. Implemented:** ORS 462.725

**Proposed Amendments:** 462-140-0340, 462-160-0010

**Last Date for Comment:** 9-15-05

**Summary:** Amends the rules pertaining to duties of jockeys and permitted medications.

**Rules Coordinator:** Carol N. Morgan

**Address:** Oregon Racing Commission, 800 NE Oregon St., Suite 310, Portland, OR 97232

**Telephone:** (971) 673-0207

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**Water Resources Department**  
**Chapter 690**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-12-05	1-2 p.m.	OWRD Conf. Rm. 124a 725 Summer St. NE Salem, OR
9-12-05	5-6 p.m.	OWRD Conf. Rm. 124a 725 Summer St. NE Salem, OR

**Hearing Officer:** Mary Grainey

**Stat. Auth.:** ORS 537 & 543; Other Auth.: Sec. 27 Ch. 569, OL 1985



## NOTICES OF PROPOSED RULEMAKING

**Stats. Implemented:** ORS 537 & 543

**Proposed Repeals:** Rules in 690-050 & 690-074

**Last Date for Comment:** 9-23-05

**Summary:** OAR Chapter 690 Divisions 50 and 74 were superseded in 1986, with the adoption of OAR Chapter 690, Division 51 - Appropriation and Use of Water for Hydroelectric Power and Standards for Hydroelectric Applications. OAR 690-051-0020(3) specifies that rule divisions 690-50 and 690-74 apply only to hydroelectric projects defined in Section 27, Chapter 569, Oregon Laws 1985. Those projects were specified as projects greater than 25 megawatts for which funding was approved by a city before May 15, 1985. Since no such projects are pending, OAR Chapter 690 Divisions 50 and 74 are proposed to be repealed. All hydroelectric projects will be reviewed under OAR 690 Chapter 51.

**Rules Coordinator:** Debbie Colbert

**Address:** Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301

**Telephone:** (503) 986-0878

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-17-05	12-1 p.m.	OWRD Conf. Rm. 124b 725 Summer St. NE Salem, OR

**Hearing Officer:** Lisa Juul

**Stat. Auth.:** ORS 537.230 & 537.630

**Stats. Implemented:** ORS 537.230, 537.630 & HB 3038 (2005 Legislative Session)

**Proposed Amendments:** 690-315-0010, 690-315-0060, 690-315-0070, 690-315-0080, 690-315-0090

**Last Date for Comment:** 9-1-05, 5 p.m.

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

The Department previously filed notice of this rulemaking in the Oregon Bulletin that was published by the Secretary of State on July 1, 2005. In addition to that notice, this notice adds 690-315-0060 and 690-315-0090 to the list of rules to be amended. As a result of these additions, the public comment period is extended to September 1, 2005.

**Rules Coordinator:** Debbie Colbert

**Address:** Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301

**Telephone:** (503) 986-0878

# ADMINISTRATIVE RULES

## Appraiser Certification and Licensure Board Chapter 161

**Adm. Order No.:** ACLB 2-2005(Temp)  
**Filed with Sec. of State:** 6-16-2005  
**Certified to be Effective:** 7-1-05 thru 12-28-05  
**Notice Publication Date:**  
**Rules Amended:** 161-006-0025  
**Subject:** Amends Oregon Administrative Rule 161, Division 006, Rule 0025, regarding the Board's budget for the 2005–2007 biennium.  
**Rules Coordinator:** Karen Turnbow—(503) 485-2555

### 161-006-0025 Budget

The Board hereby adopts by reference the Board's 2005-2007 Biennium Budget of \$800,142 covering the period from July 1, 2005 through June 30, 2007. The Board will amend budgeted accounts as necessary within the approved budget of \$800,142 for the effective operation of the Board. The Board will not exceed the approved 2005–2007 Biennium Budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1)(2). Copies of the budget are available from the Board's office.

Stat. Auth.: ORS 674.305(8) & 674.310  
Stats. Implemented: ORS 674  
Hist.: ACLB 4-2001(Temp), f. & cert. ef. 9-12-01 thru 3-1-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 1-2003(Temp), f. & cert. ef. 1-14-03 thru 7-11-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 4-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03; ACLB 5-2003, f. & cert. ef. 11-10-03; ACLB 2-2005(Temp), f. 6-16-05, cert. ef. 7-1-05 thru 12-28-05

## Board of Massage Therapists Chapter 334

**Adm. Order No.:** BMT 2-2005(Temp)  
**Filed with Sec. of State:** 6-24-2005  
**Certified to be Effective:** 6-24-05 thru 6-30-05  
**Notice Publication Date:**  
**Rules Amended:** 334-001-0012  
**Subject:** To increase the 03–05 biennial budget from \$696,183 to \$790,606.  
**Rules Coordinator:** Michelle Sherman—(503) 365-8657

### 334-001-0012 Budget

The Oregon Board of Massage Therapists hereby amends, and fully incorporates herein, the Oregon Board of Massage Therapists' 2003–2005 Biennium budget by increasing it to \$790,606.00

Stat. Auth.: SB 1127, ORS 183 & 687.121  
Stats. Implemented: Section 6, (1) & (2)  
Hist.: BMT 2-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2001, f. & cert. ef. 5-29-01; BMT 2-2003, f. & cert. ef. 6-17-03; BMT 2-2005(Temp), f. & cert. ef. 6-24-05 thru 6-30-05

**Adm. Order No.:** BMT 3-2005  
**Filed with Sec. of State:** 6-24-2005  
**Certified to be Effective:** 7-1-05  
**Notice Publication Date:** 6-1-05  
**Rules Amended:** 334-001-0012, 334-001-0045  
**Subject:** 334-001-0012 is to adopt the 2005–2007 biennial budget. 334-001-0045 is to adopt the Board's own personnel policy.  
**Rules Coordinator:** Michelle Sherman—(503) 365-8657

### 334-001-0012 Budget

The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists' 2005–2007 Biennium budget of \$931,768.00.

Stat. Auth.: SB 1127, ORS 183 & 687.121  
Stats. Implemented: Section 6, (1) & (2)  
Hist.: BMT 2-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2001, f. & cert. ef. 5-29-01; BMT 2-2003, f. & cert. ef. 6-17-03; BMT 2-2005(Temp), f. & cert. ef. 6-24-05 thru 6-30-05; BMT 3-2005, f. 6-24-05, cert. ef. 7-1-05

### 334-001-0045 Personnel Policies

The Oregon Board of Massage Therapists hereby adopts its own personnel policies and, as such, are controlling. This policy is contained as an interagency working document. The Board intends to develop its own personnel policies, but until those are developed and adopted these rules are controlling.

Stat. Auth.: SB 1127  
Stats. Implemented: Section 5(4)  
Hist.: BMT 3-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 3-2005, f. 6-24-05, cert. ef. 7-1-05

## Board of Nursing Chapter 851

**Adm. Order No.:** BN 4-2005  
**Filed with Sec. of State:** 6-30-2005  
**Certified to be Effective:** 6-30-05  
**Notice Publication Date:** 5-1-05  
**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 April and May 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 May 2005 with the exception of certain drugs and drug groups, which are listed below.
  - (c) "Board" means the Oregon State Board of Nursing.
  - (2) The Board as authorized by ORS 678.385 (1993), shall determine the drugs which nurse practitioners may prescribe, shall periodically revise the formulary by rulemaking hearing at each regular Board meeting and shall transmit the list of those drugs which are exceptions to the formulary, and which nurse practitioners may not prescribe, to nurse practitioners with prescriptive authority and other interested parties.
  - (3) The formulary is constructed based on the following premises:
    - (a) Nurse practitioners may provide care for specialized client populations within each nurse practitioner category/scope of practice;
    - (b) Nurse practitioner prescribing is limited by the nurse practitioner's scope of practice and knowledge base within that scope of practice;
    - (c) Nurse practitioners may prescribe the drugs appropriate for patients within their scope of practice as defined by OAR 851-050-0005;
    - (d) Nurse practitioners may prescribe drugs for conditions the nurse practitioner does not routinely treat within the scope of their practice provided there is ongoing consultation/ collaboration with another health care provider who has the authority and experience to prescribe the drug(s);
    - (e) Nurse practitioners shall be held strictly accountable for their prescribing decisions;
    - (f) All drugs on the formulary shall have Food and Drug Administration (FDA) approval.
  - (4) Nurse practitioners with prescriptive authority are authorized to prescribe:
    - (a) All over the counter drugs;
    - (b) Appliances and devices.
    - (5) Nurse practitioners are authorized to prescribe the following drugs as listed in Drug Facts and Comparisons dated May 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;



# ADMINISTRATIVE RULES

present a medical release for full return to normal activity prior to taking the manual skills portion of the exam.

(c) English as a second language does not qualify for special testing accommodation.

(2) Controls:

(a) Reference materials, including dictionaries, are prohibited at the test site.

(b) Translators, unless as an approved accommodation for a qualifying disability, are prohibited at the test site. This includes written materials or documents used for translating one language to another and electronic devices used for translation purposes.

(3) Examination results shall be mailed to the applicant at the applicant's address of record and shall not be released by telephone.

(4) Re-examination:

(a) An applicant who fails and is eligible to retake the competency examination shall submit the appropriate application and examination fee.

(b) An applicant who fails the competency examination three times must complete another Board-approved nursing assistant level I training program prior to re-examination.

(5) Failure to take the examination or to reschedule the examination in advance will result in re-examination fees unless the absence has been excused by the testing service.

(6) Current certification may be verified using the Board's automated verification line or internet verification system.

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 2-2004, f. 1-29-04, cert. ef. 1-12-04; BN 6-2005, f. & cert. ef. 6-30-05

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## Board of Optometry Chapter 852

**Adm. Order No.:** OPT 3-2005

**Filed with Sec. of State:** 6-29-2005

**Certified to be Effective:** 7-1-05

**Notice Publication Date:** 5-1-05

**Rules Amended:** 852-005-0005, 852-010-0080, 852-050-0006

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

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

852-050-0006 - Establishes the Board's renewal fees.

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

### 852-005-0005

#### Budget

The Oregon Board of Optometry hereby adopts by reference the Oregon Board of Optometry 2005-2007 Biennium Budget of \$553,724 covering the period from July 1, 2005 through June 30, 2007. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of \$553,724 for the effective operation of the Board. The Board will not exceed the approved 2005-2007 Biennium Budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1)(2). Copies of the budget are available from the Board's office and are also posted on the Board's website.

Stat. Auth.: ORS 683 & 182

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

Hist.: OPT 1-1999, f. 6-4-99, cert. ef. 7-1-99; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05

### 852-010-0080

#### Schedule of Fees

(1) The following fee schedule is established by the Oregon Board of Optometry to set forth in one place all of the fees charged by the Board:

(a) Annual Renewal — Active License \$210;

(b) Annual Renewal — Inactive License \$90;

(c) Continuing Education Renewal Fee \$20;

(d) Disciplinary Renewal Fee \$35;

(e) Additional Office License \$40;

(f) Multiple Office License \$80;

(g) Application for Examination and Licensure \$150;

(h) Application for Endorsement Examination and Licensure \$250;

(i) Application for TPA Certification \$75;

(j) Law and Administrative Rule Examination \$75;

(k) Reactivation of License \$100;

(l) Reinstatement of License \$100;

(m) Wall Display Certificate \$20;

(n) License Verification \$20;

(o) Law and Administrative Rules Booklet \$25;

(p) List of Licensees \$25 — \$50;

(q) Late Renewal application, payment, continuing optometric education \$50 — \$200;

(r) Failure to notify the Board of practice locations \$50 — \$200;

(2) The Board will not refund any fee unless there has been an error by the Board in the charging of the fee. Information not known by the Board because the licensee, applicant, etc. has not supplied the correct information is not considered an error.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.270 & 182.466

Hist.: OPT 1-2001, f. 6-26-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05

### 852-050-0006

#### Annual Renewal of Active License

(1) Active licensees shall annually renew their license to practice optometry for the license period established by the Board. License year renewal periods are established by the Board based upon birth dates of licensees in order that expiration dates fall due each month of the year.

(a) If the licensee's date of birth is not available to the Board, a license renewal period will be established for the licensee.

(b) License renewals will cover 12-month license periods based upon birth dates.

(2) License renewal applications are due in the Board's office on the first day of the month of license expiration (month of licensee's birth date).

(3) The license renewal application must include the following to be considered complete:

(a) A completed license renewal form signed by the licensee;

(b) Check or money order for the correct license renewal fees;

(c) Documentation of completion of the required continuing optometric education.

(d) Documentation of current CPR certification, as required in OAR 852-80-040(4)(F), if licensed to use Nontopical TPA's.

(4) The Board will, as a courtesy, send license year renewal forms to the licensees last address of record. The license renewal application is due and must be postmarked on or before the first day of the month of license expiration.

(5) A licensee who is not more than 30 days delinquent in renewing the license may renew the license upon payment to the Board of the required fee plus a delinquent fee. If a licensee is more than 30 days delinquent the license is automatically suspended upon 30 day notice given to the licensee.

(6) If a person is more than 60 days in renewing the license the person may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement when in its opinion it is in the best interest of the public to do so.

(7) The annual fee for the renewal of a license to practice optometry shall be \$210, plus an additional \$20 assessed for continuing education offerings and a \$35.00 disciplinary fee.

(8) Any licensee whose license renewal fee is postmarked after the first day of the month of license expiration shall be subject to a late payment fee of \$50 for the first failure; \$100 for the second failure; \$200 for each subsequent failure. This late payment fee must be received before the license will be issued.

Stat. Auth.: ORS 683 & 182

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

Hist.: OE 2-1982, f. & ef. 3-18-82; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1988, f. & cert. ef. 6-28-88; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05

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## Board of Pharmacy Chapter 855

**Adm. Order No.:** BP 5-2005(Temp)

**Filed with Sec. of State:** 6-28-2005

**Certified to be Effective:** 6-28-05 thru 12-13-05

**Notice Publication Date:**

**Rules Adopted:** 855-041-0208

**Subject:** Senate Bill 512 (2005) changes the laws related to pharmacy technicians by moving them from a registration scheme to a licensing scheme. This new rule makes it clear that the files for exist-



# ADMINISTRATIVE RULES

ing pharmacy technicians and applicants transfer and remain in effect under the new licensing scheme.

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

## 855-041-0208

### Transition from Registration of Technician to Licensure of Technician

The existing Board file containing information on each registered pharmacy technician or applicant for registration as a pharmacy technician remains in effect when the registration program transitions to licensure of pharmacy technicians. Pharmacy technicians and applicants need not resubmit application material or other information to the Board because of the transition to licensure unless the Board specifically requests resubmission. Complaints, investigations, renewal information, criminal history information and registration history information remain in effect and carry over into the licensing history for each pharmacy technician or applicant.

Stat. Auth.: ORS 689.205 & Senate Bill 512 (2005), Sec. 14

Stats. Implemented: Senate Bill 512 (2005), Sec. 14

Hist.: BP 5-2005(Temp), f. & cert. ef. 6-28-05 thru 12-13-05

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**Adm. Order No.:** BP 6-2005(Temp)

**Filed with Sec. of State:** 6-28-2005

**Certified to be Effective:** 6-28-05 thru 12-13-05

**Notice Publication Date:**

**Rules Amended:** 855-019-0055

**Subject:** Senate Bill 512 (2005) changes the laws related to pharmacy technicians by moving them from a registration scheme to a licensing scheme. This amendment outlines the grounds upon which the Board will refuse to issue or renew, or suspend, revoke or restrict a pharmacy technician license under the 2005 amendments to ORS 689.490. In addition to reiterating the grounds set by statute, the rule defines “unprofessional conduct” for purposes of pharmacy technicians.

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

## 855-019-0055

### Grounds for Discipline

(1) The State Board of Pharmacy may refuse to issue or renew, or suspend, revoke, or restrict the license of a pharmacist or pharmacy technician or may impose a civil penalty upon the pharmacist or pharmacy technician upon the following grounds:

(a) Unprofessional conduct;

(b) Repeated or gross negligence;

(c) Incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence and safety to the public;

(d) Habitual or excess use of intoxicants, drugs or controlled substances;

(e) Being found guilty by the Board of a violation of the pharmacy or drug laws of this state or rules pertaining thereto or of statutes, rules or regulations of any other state or of the federal government;

(f) Being found guilty by a court of competent jurisdiction of a felony as defined by the laws of this state;

(g) Being found guilty by a court of competent jurisdiction of a violation of the pharmacy or drug laws of this state or rules pertaining thereto or of statutes, rules or regulations of any other state or of the federal government;

(h) Fraud or intentional misrepresentation in securing or attempting to secure the issuance or renewal of a license to practice pharmacy or a drug outlet registration or as a pharmacy technician;

(i) Engaging an individual to engage in the practice of pharmacy without a license or falsely using the title of pharmacist;

(j) Aiding and abetting an individual to engage in the practice of pharmacy without a license or falsely using the title of pharmacist;

(k) Being found by the Board to be in violation of any violation of any of the provisions of ORS 435.010 to 435.130, 453.025, 453.045, 475.035 to 475.190, 475.805 to 475.995 or 689.005 to 689.995 or the rules adopted pursuant thereto.

(l) Failure to appropriately perform the duties of a pharmacist as outlined in OAR 855-041-0210 while engaging in the practice of pharmacy as defined in ORS 689.015.

(m) Aiding and abetting an individual in performing the duties of a pharmacy technician or in using the title of pharmacy technician without a license.

(n) Incapacity of a nature that prevents a pharmacy technician from performing the duties of a pharmacy technician with reasonable skill, competence and safety to the public.

(2) “Unprofessional conduct” means:

(a) Repeated or gross negligence in the practice of pharmacy or as a pharmacy technician; or

(b) Fraud or misrepresentation in dealings relating to pharmacy practice or perform the duties of a pharmacy technician with:

(A) Customers, patients, or the public;

(B) Practitioners authorized to prescribe drugs, medications, or devices;

(C) Insurance companies;

(D) Wholesalers, manufacturers, or distributors of drugs, medications, or devices;

(E) Health care facilities;

(F) Government agencies;

(G) Drug outlets.

(c) Illegal use of drugs, medications, or devices without a practitioner’s prescription, or otherwise contrary to federal or state law or regulations;

(d) Theft of drugs, medications, or devices or theft of any other property or services under circumstances which bear a demonstrable relationship to the practice of pharmacy or perform the duties of a pharmacy technician;

(e) Dispensing a drug, medication or device where the pharmacist knows or should know due to the apparent circumstances that the purported prescription is bogus or that the prescription is issued for other than a legitimate medical purpose, including circumstances such as:

(A) Type of drug prescribed;

(B) Amount prescribed; or

(C) When prescribed out of context of dose.

(f) Any act or practice relating to the practice of pharmacy or perform the duties of a pharmacy technician which is prohibited by state or federal law or regulation;

(g) Authorizing or permitting any person to practice pharmacy or perform the duties of a pharmacy technician in violation of the Oregon Pharmacy Act or the rules of the Board; and

(h) Any conduct or practice by a pharmacy technician, pharmacist or pharmacy which the Board determines is contrary to the accepted standards of practice.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151 & Senate Bill 512 (2005), Sec. 8

Hist.: PB 1-1989, f. & cert. ef. 1-3-89; BP 1-2002, f. & cert. ef. 1-8-02; BP 6-2005(Temp), f. & cert. ef. 6-28-05 thru 12-13-05

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## Bureau of Labor and Industries Chapter 839

**Adm. Order No.:** BLI 12-2005

**Filed with Sec. of State:** 6-21-2005

**Certified to be Effective:** 6-21-05

**Notice Publication Date:**

**Rules Amended:** 839-025-0750

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

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

## 839-025-0750

### Residential Prevailing Wage Rate Determinations

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

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

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

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

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

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

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

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

(h) *Special Prevailing Wage Rate Determination for Residential Project, Prairie House, Project #2005-04*, dated May 26 2005, for the period of June 1, 2005 through June 30, 2006.

(i) *Special Prevailing Wage Rate Determination for Residential Project, Ariel South, Project #2005-05*, dated June 20, 2005, for the period of June 21, 2005 through June 30, 2006.

(j) *Special Prevailing Wage Rate Determination Extension for Residential Project, Headwaters Apartments, Project #2004-06*, dated October 14, 2004. Rate extension dated June 20, 2005, for the period of July 1, 2005 through June 30, 2006.

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

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

Stat. Auth.: ORS 279C.815

Stats. Implemented: ORS 279C.815

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

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**Adm. Order No.:** BLI 13-2005

**Filed with Sec. of State:** 6-30-2005

**Certified to be Effective:** 7-1-05

**Notice Publication Date:**

**Rules Amended:** 839-025-0750

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

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

## 839-025-0750

### Residential Prevailing Wage Rate Determinations

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

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

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

(c) *Special Prevailing Wage Rate Determination for Residential Project, Prairie House, Project #2005-04*, dated May 26 2005, for the period of June 1, 2005 through June 30, 2006.

(d) *Special Prevailing Wage Rate Determination for Residential Project, Ariel South, Project #2005-05*, dated June 20, 2005, for the period of June 21, 2005 through June 30, 2006.

(e) *Special Prevailing Wage Rate Determination Extension for Residential Project, Headwaters Apartments, Project #2004-06*, dated October 14, 2004. Rate extension dated June 20, 2005, for the period of July 1, 2005 through June 30, 2006.

(f) *Special Prevailing Wage Rate Determination Extension for Residential Project, Madrone Street Affordable Housing, Project #2004-01*, dated May 1, 2004. Rate extension dated June 29, 2005 for the period of July 1, 2005 through December 31, 2005.

(g) *Special Prevailing Wage Rate Determination Extension for Residential Project, "2801 N. Oak," Project #2005-02*, dated June 29, 2005, for the period of July 1, 2005 through July 31, 2005.

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

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

Stat. Auth.: ORS 279C.815

Stats. Implemented: ORS 279C.815

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

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## Construction Contractors Board

### Chapter 812

**Adm. Order No.:** CCB 2-2005

**Filed with Sec. of State:** 6-29-2005

**Certified to be Effective:** 7-1-05

**Notice Publication Date:** 5-1-05

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

**Rules Ren. & Amended:** 812-010-0440 to 812-010-0470

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

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

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

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

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

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

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

OAR 812-010-0425 is amended to add language that if the arbitrator waives or extends deadlines under this rule, the arbitrator must notify the agency and deletes section (10) that is outdated language

# ADMINISTRATIVE RULES

from rule and the agency may lack authority to set limits on the time to prepare an amended arbitration award.

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

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

**Rules Coordinator:** Catherine Dixon—(503) 378-4621, ext. 4077

## 812-002-0220

### Date Contractor Incurred Indebtedness

"Date the contractor incurred the indebtedness" as used in ORS 701.143, has the following meanings:

(1) For a material claim, this date is the date of delivery or the date the purchaser takes possession of the materials that are the subject of the claim. If the delivery date is unknown, the date of the invoice applies except in the case of special or custom ordered materials, the date of order constitutes the date of indebtedness.

(2) For an employee claim or employee trust claim, this date is the date the employee performed the work that is the subject of the claim.

(3) For a subcontractor claim, this date is the date the subcontractor ceases to perform the work at issue in the claim, substantially completes the work or submits a request for payment for the work, whichever occurs first.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.143 & 701.145

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05

## 812-002-0760

### Work as a Contractor Includes

"Work as a contractor," as used in ORS 701.055(1) includes, but is not limited to:

(1) Except as modified by section (9) of this rule, construction, alteration, repair, improvement, inspection, set-up, erection, moving, or demolition of a structure or any other improvement to real estate, including activities performed on-site in the normal course of construction, or receiving and accepting any payments for the above.

(2) Chimney or flue inspection or repair.

(3) Concrete, asphalt and other testing that involves structural modifications, and soils testing associated with planned or existing structures.

(4) Construction management.

(5) Excavation, backfill, grading, and trenching for the structure or its appurtenances or to accomplish proper drainage and not for landscaping.

(6) Improvement of lots with the intent of selling lots with structure(s). This may include contracting with a primary contractor to construct, alter or improve structures.

(7) Inspection of cross connections and testing of backflow prevention devices performed by persons licensed under ORS 448.279 by the Health Division except when performed by a person licensed as a landscape contractor as provided under ORS 671.510 through 671.710 or when performed by an employee of a water supplier as defined in ORS 448.115.

(8) Labor only, regardless of whether compensated by the hour or by the job.

(9) Pest control, if in the course of that work any structural modifications are performed. Structural modifications do not include the following when performed by a pesticide operator licensed under ORS 634.116. Installation of soil vapor barriers; sealing of holes, cracks, construction junctures or other small openings that allow the ingress of pests with mortar, plaster, caulking, or similar materials; installation of screens, bird netting and bird repellent devices; installation of rodent shields around utility entrances, doorways and other points of rodent ingress; and drilling of holes equal to or smaller than 3/8 inch in diameter for the purpose of injecting insecticides into small voids, removal and replacement of floor tiles for the purpose of drilling a slab floor for the control of subterranean termites; and the drilling of slab floors for control of termites.

(10) Shoring.

(11) Shelving attached to a structure.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 448.279, 448.115, 671.510 - 671.710 & 701.055

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05

## 812-003-0170

### Bond Amounts

(1) The following surety bond amounts are required under ORS 701.085(2)–(5):

(a) General Contractor—All Structures: \$15,000;

(b) General Contractor—Residential: \$15,000;

(c) Specialty Contractor—All Structures: \$10,000;

(d) Specialty Contractor—Residential: \$10,000;

(e) Limited Contractor: \$5,000;

(f) Inspector: \$10,000;

(g) Licensed Developer: \$15,000.

(2) A contractor may obtain or maintain a bond in an amount that exceeds the amount required under section (1) of this rule if the bond obtained or maintained is in an amount that is equal to an amount required under section (1) of this rule.

(3) Under ORS 701.085(8), the agency may require a bond of up to five times the normally required amount (up to \$75,000 for a General Contractor or Licensed Developer, \$50,000 for a Specialty Contractor or Inspector, or \$25,000 for a Limited Contractor), if it determines that a current or previous license of an owner, partner, corporate officer, trustee or member of a current licensee or applicant (any person applying to renew, reissue, or reinstate his/her license or applying for a new license), has:

(a) A history of unpaid final orders consisting of two or more final orders unpaid for longer than thirty (30) days following the date of issuance;

(b) Three or more open owner claims filed on three or more different structures by three or more different owner claimants; or

(c) Five or more claims open at one time.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.085

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05

## 812-003-0350

### Inactive Status Request at Interim Renewal Period

(1) A request to convert a license to inactive status made prior to the expiration date of the license, but at a time other than the time of renewal of the license, will be accepted only if the licensee making the request has paid all applicable fees required under OAR 812-003-0140 and 812-003-0320.

(2) If a license is converted to inactive status prior to the expiration date of the license but at a time other than the time of renewal of the license, the effective dates of the license will remain unchanged and the license will expire at the upcoming expiration date.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.115 & 701.125

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05

## 812-003-0380

### Converting From Inactive Back to Active Status

(1) To convert from an inactive status to an active status, the licensee must:

(a) Submit a request to convert to an active status on forms provided by the agency; and

(b) Comply with section (3), (4) or (5) of this rule as applicable.

(2) A licensee requesting conversion from an inactive status to an active status at the time of renewal must:

(a) Submit the fees required under OAR 812-003-0140;

(b) Submit the required surety bond and general liability insurance for the category requested; and

(c) Comply with all other licensing requirements prescribed by the Board.

(3) A licensee requesting conversion from an inactive status to an active status at a time other than renewal and prior to the expiration date of the license must:

(a) Submit all fees to date as required by OAR 812-003-0140 and 812-003-0320;

(b) Submit the required surety bond and general liability insurance for the category requested; and

(c) Comply with all other licensing requirements prescribed by the Board.

(4) A licensee requesting conversion from an inactive status to an active status during a lapse due to the expiration of the license must:

(a) Request the conversion within two years from the date of lapse;



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- (b) Comply with all licensing requirements prescribed by the Board;
- (c) Submit the required surety bond and general liability insurance for the category requested; and
- (d) Submit all fees required under OAR 812-003-0140.
- (5) If a license is converted from an inactive to an active status, the agency shall establish the effective date of the license.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.115 & 701.125

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05

## 812-004-0600

### Payment from Surety Bonds

- (1) The agency may notify the surety company of claims pending.
- (2) The agency shall notify the surety company of claims ready for payment. This notice shall constitute notice that payment is due on the claim. Claims are ready for payment when all of the following have occurred:

(a)(A) A final order was issued in a contested case and 30 days have elapsed to allow the respondent time to pay the order; or

(B) An arbitration award was issued and is ready for payment under OAR 812-010-0470 and 30 days have elapsed to allow the respondent time to pay the award.

(b) The agency has received no evidence that the respondent has complied with the award or final order;

(c) The agency has not granted a stay of enforcement of the final order or award pending judicial review by the Court of Appeals; and

(d) All other claims filed against the respondent within the same 90-day filing period under ORS 701.150 have either been resolved, been closed or have reached the same state of processing as the subject claim.

(3) Except as provided in section (5) of this rule, claims related to a job that are satisfied from a surety bond shall be paid as follows:

(a) If a surety bond was in effect when the work period began, payment shall be made from that surety bond.

(b) If no surety bond was in effect when the work period began, but a surety bond subsequently became effective during the work period of the contract, payment shall be made from the first surety bond to become effective after the beginning of the work period.

(c) A surety bond that is liable for a claim under subsection (3)(a) or (b) of this rule is liable for all claims related to the job and subsequent surety bonds have no liability for any claim related to the job.

(4) Except as provided in section (5) of this rule, if during a work period the amount of a surety bond is changed and a claim is filed relating to work performed during that work period, the claimant may recover from the surety bond up to the amount in effect at the time the contract was entered into.

(5) If respondent maintains multiple surety bonds, the following apply:

(a) If multiple surety bonds were in effect when the work period began, payment shall be made from all surety bonds in effect.

(b) If no surety bond was in effect when the work period began, but multiple surety bonds subsequently became effective during the work period of the contract and the effective dates of the surety bonds are substantially the same, payment shall be made from multiple surety bonds.

(c) Payment to satisfy a claim made under section (5) of this rule from a surety bond shall be in the same proportion that the penal sum of the surety bond bears to the total of the penal sums of the multiple surety bonds.

(6) If more than one claim must be paid from a surety bond under section (3) of this rule or multiple surety bonds under section (5) of this rule and the total amount due to be paid exceeds the total amount available from those surety bonds, payment on a claim shall be made in the same proportion that the amount due on that claim bears to the total due on all claims that must be paid.

(7) The full penal sum of a bond shall be available to pay claims under this rule, notwithstanding that the penal sum may exceed the bond amount required under OAR 812-003-0170.

(8) Unless the order provides otherwise, if an award or a final order provides that two or more respondents are jointly and severally liable for an amount due to a claimant and payment is due from the surety bonds of the respondents, payment shall be made in equal amounts from each bond subject to payment. If one or more of the bonds is or becomes exhausted, payment shall be made from the remaining bond or in equal amounts from the remaining bonds. If one of the respondents liable on the claim makes payment on the claim, that payment shall reduce the payments required from that respondent's bond under this section by an amount equal to the payment made by the respondent.

(9) A surety company may not condition payment of a claim on the execution of a release by claimant.

(10) Inactive status of the license of the respondent does not excuse payment by a surety company required under this rule.

Stat. Auth.: ORS 670.310, 701.150 & 701.235

Stats. Implemented: ORS 701.150

Hist.: IBB 6-1980, f. & ef. 11-4-80; IBB 3-1981, f. 10-30-81, ef. 11-1-81; IBB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0075; IBB 6-1984(Temp), f. & ef. 9-18-84; IBB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0070; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2002(Temp), f. & cert. ef. 5-23-02 thru 11-19-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05

## 812-006-0030

### Education Provider Approval

(1) No education shall meet the requirements of ORS 701.280 unless it is offered by a provider approved by the agency.

(2) To receive agency approval, individuals and organizations shall make application and sign an agreement with the agency prior to offering the 16 hours of education.

(a) The provider application shall include, but will not be limited to, provisions for:

(A) Recording the name, address, and contact information, and name of responsible administrator of the provider.

(B) Demonstrating that all its instructors have at least two years total experience either teaching adults or working in the instructor's subject area or a combination of the two, including the submission of instructor resumes or work history summaries.

(b) No provider may instruct any part of the 16-hour course until there is a fully executed agreement.

(c) A provider must comply at all times with the following requirements:

(A) The provider will provide 16-hours of instruction which will exclude registration and breaks.

(B) The provider will verify that each student taking the 16-hour course has a current agency-approved manual.

(C) The provider will instruct using all the approved curriculum and the approved course manual.

(D) The provider will send electronic course completion records to the agency in a format approved by the agency and keep course completion records for a minimum of five years.

(E) The provider will communicate law changes and program procedural changes sent to them in writing from the agency to the provider's instructors and will implement these changes within 30 business days.

(F) The provider will only use approved instructors who have at least two years total experience either teaching adults or working in the instructor's subject area or a combination of the two.

(G) The provider will request and receive in writing agency approval of all instructors at least 10 business days before instructor is scheduled to teach.

(H) The provider will provide a mechanism for students to contact their instructor(s) outside of class for a minimum of one hour per week for 90 days from date of enrollment in course.

(I) The provider will give all students information about how to contact instructors and hours of availability before the end of the 16-hour course.

(J) The provider will comply with all applicable federal and state laws.

(K) The agency may publicize a provider's test passage rate for its students.

(3) The agency may revoke a provider's right to offer classes and terminate the agreement of a provider at any time the provider fails to:

(a) Meet all requirements of the agreement; and

(b) Comply with administrative rules in 812-006-0030.

(4) The agency may revoke a provider's right to offer classes and terminate the agreement of a provider:

(a) Whose students do not pass the agency test at least 70 percent of the time after the provider has provided classes for three months; and

(b) That fails to maintain the 70 percent test passing rate during the remaining period of the agreement.

Stat. Auth.: ORS 701.075 & 701.280

Stats. Implemented: ORS 701.075 & 701.280

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 1-2005(Temp), f. & cert. ef. 1-5-05 thru 7-1-05; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05

# ADMINISTRATIVE RULES

## 812-010-0080

### Delegation of Duties

If the agency refers a dispute to the Office of Administrative Hearings for arbitration under these rules, the duties of the agency under these rules may be carried out through representatives as directed by the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge, except that the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may not perform the duties of the agency under OAR 812-010-0040, 812-010-0100 or 812-010-0470.

Stat. Auth.: ORS 670.310, 701.148 & 701.235

Stats. Implemented: ORS 701.147 & 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05

## 812-010-0420

### Time, Form, and Scope of Award; Limitation on Award

(1) An award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than thirty days from the date of the closing of the arbitration hearing.

(2) The agency may extend the time to issue an award under section (1) of this rule.

(3) The award shall be in writing and shall be signed or otherwise authenticated by the arbitrator.

(4) The award shall fully dispose of all issues presented to the arbitrator that are required to resolve the dispute. The arbitrator may summarily dismiss issues that raise no substantive factual or legal questions. The award shall contain sufficient rulings on issues and explanations of the reasoning of the arbitrator that a party may reasonably understand the basis of the decision and evaluate the award to determine if filing a petition to modify or correct the award would be appropriate.

(5) An arbitrator may not issue an award in an amount greater than the total amount a party alleges another party owes the party in:

(a) The most recent declaration of damages or amended declaration of damages filed by the party under OAR 812-004-0540, 812-004-0550 or 812-010-0110; or

(b) The Statement of Claim filed by the party under OAR 812-004-0340, if no declaration of damages was filed.

(6) When a claimant makes a claim against a respondent's surety bond required under ORS 701.085 and the parties to the claim have not agreed that the arbitration will bind claimant, only the claimant may assert damages. The arbitrator may award damages to claimant, but not to respondent. Respondent may assert amounts owed to it as an offset under section (6) of this rule.

(7) An arbitrator shall consider any amounts owed by a party claiming damages to another party under the terms of the contract at issue in the arbitration and reduce the amount of an award of damages to the party claiming the damages by the amount owed as an offset to the damages, regardless of whether the other party asserting the offset filed a declaration of damages as to the offset. If the party asserting the offset did not file a declaration of damages, the amount of the offset may not exceed the amount of the award.

(8) After an award has been issued, a party to the arbitration may:

(a) File a request to modify or correct the award under ORS 36.690.

(b) File the award with the court with a petition to confirm the award under ORS 36.700.

(c) File a petition with the court to vacate, modify or correct the award under ORS 36.705 and 36.710.

(9)(a) Except as otherwise provided in this rule, the arbitrator may dismiss a claim or may grant to any party any remedy or relief, including equitable relief, that the arbitrator deems just and equitable, consistent with the parties' contract or their agreement to arbitrate.

(b) If the award contains an award of monetary amounts that are payable from respondent's bond required under ORS 701.085 and other amounts that are not payable from the bond under OAR 812-004-0250 or any other law, the award shall segregate these amounts.

(c) If the parties to the arbitration mutually consent to the arbitration in a written agreement and the contract at issue in the arbitration provides for an award of attorney fees, court costs, other costs or interest, the arbitrator may include these fees, costs, or interest in the award, subject to subsection (b) of this section.

(10) If a limitation on damages under section (4) is based on a declaration of damages or Statement of Claim that includes an itemization of claim items and the total of those items is different from the total damages

claimant alleges is due from the respondent, the limitation on damages shall be based on the larger of the two totals.

(11) If the award requires the payment of money, including but not limited to payment of costs or attorney fees, the award must be accompanied by a separate statement that contains the information required by ORCP 70 A(2)(a) for money judgments.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 36.690, 36.700, 36.705, 36.710, 701.145 & 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05

## 812-010-0425

### Petition to Modify or Correct an Award

(1) A party to arbitration or the agency may petition the arbitrator to modify or correct an award. A party may file only one petition of an award under this rule.

(2) The petition to modify or correct an award must be in writing and substantially conform to the requirements of OAR 812-010-0430.

(3) To be considered, a petition to modify or correct an award must be received by the arbitrator no later than 21 days after the proposed award was mailed to the parties.

(4) If the arbitrator receives a timely petition to modify or correct an award, the arbitrator shall mail copies of the petition to the other parties to the arbitration and to the agency.

(5) A party may respond to the petition to modify or correct an award. To be considered, a response to the petition must be received by the arbitrator no later than 14 days after the arbitrator mailed a copy of the petition to the party.

(6) The arbitrator may waive or extend the time limitations in sections (3) and (5) of this rule on a showing of good cause by the person requesting the waiver or extension. If the arbitrator waives or extends the time limitations in sections (3) and (5), the arbitrator must notify the agency of the waiver or extension.

(7) The arbitrator may modify or correct an award:

(a) If there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(b) If the arbitrator made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision on the claims submitted;

(c) If the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted;

(d) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(e) To clarify the award.

(8) The arbitrator shall consider the petition and any response received from a non-petitioning party, except that the arbitrator may not consider evidence that was not introduced at the arbitration.

(9) The arbitrator shall issue an amended award that addresses each substantial issue raised in the petition. The amended award may summarily dismiss issues as appropriate. The arbitrator may:

(a) Affirm the original award and incorporate it in the amended award by reference; or

(b) Issue a new award.

(10) If the arbitrator who prepared the award is not available to consider a petition modify or correct the award, the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may assign another arbitrator to review the tapes and exhibits of the arbitration, the award, the petition and any response and render a decision on the petition. If the new arbitrator is unable to render a decision on the petition, the petition shall be deemed denied.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 183, 701.147 & 701.148

Hist.: CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05

## 812-010-0460

### Petition to Court to Confirm Award or Vacate, Modify or Correct Award

(1) A party may petition the court to confirm an award under ORS 36.700. The petitioning party shall serve the agency with a copy of a petition filed under this section.

(2) A party may petition the court to vacate, modify or correct an award under ORS 36.705 or 36.710. The petitioning party shall serve the agency with a copy of a petition filed under this section.

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(3) Failure of a party to serve the agency under section (2) of this rule constitutes a waiver of any objection to transmittal of the award to respondents surety company for payment under OAR 812-004-0600.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05

## 812-010-0470

### Payments from Licensee's Bond

(1) If an award or amended award requires payment by a licensee and the licensee fails to pay the award within the time period provided in OAR 812-004-0600, the award is payable from the surety bond to the extent payment is authorized under ORS 701.150. Payments from the bond shall be subject to the laws in ORS Chapter 701 and rules in division 4 of this chapter, including but not limited to OAR 812-004-0600.

(2) For purposes of OAR 812-004-0600, an award or amended award is ready for payment by a party ordered to pay damages if 21 days have elapsed after the award was issued, and:

(a) The arbitrator has not received a petition to modify or correct the award; and

(b) The agency has not received a copy of a petition to modify, correct or vacate the award filed with the circuit court.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.150

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05, Renumbered from 812-010-0440

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## Department of Administrative Services Chapter 125

**Adm. Order No.:** DAS 8-2005

**Filed with Sec. of State:** 6-21-2005

**Certified to be Effective:** 6-21-05

**Notice Publication Date:** 5-1-05

**Rules Amended:** 125-055-0005, 125-055-0010, 125-055-0015, 125-055-0020, 125-055-0025, 125-055-0030, 125-055-0035, 125-055-0040, 125-055-0045

**Rules Repealed:** 125-055-0005(T), 125-055-0010(T), 125-055-0015(T), 125-055-0020(T), 125-055-0025(T), 125-055-0030(T), 125-055-0035(T), 125-055-0040(T), 125-055-0045(T)

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

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

## 125-055-0005

### Definitions for Purchasing Policies Governing the Acquisition of Goods and Services from Qualified Rehabilitation Facilities

As used in OAR 125-055-0005 to 125-055-0045:

(1) "Accredited Vocational Consultant" means an individual who is accredited as:

(a) A Certified Rehabilitation Counselor (CRC) by the Certification of Disability Management Specialists Commission;

(b) A Certified Insurance Rehabilitation Specialist (CIRS) by the Certified Insurance Rehabilitation Specialist Commission; or

(c) A Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment Specialist (CWA) by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists.

(2) "Agency" means a public agency, as defined in ORS 279.835(4).

(3) "Competitive Employment" means work performed by an individual in the competitive labor market on a full-time basis with no more than reasonable accommodation (as required by the Americans with

Disabilities Act, 42 USC §§12101 to 12213) for which the individual is compensated within the range of customary wages and levels of benefits paid in the community for the same or similar work performed by individuals who are not disabled.

(4) "Disabled Individual," as defined in ORS 279.835(3), means a person who has a physical or mental impairment (a residual, limiting condition resulting from an injury, disease or congenital defect) that so limits the person's functional capabilities (such as mobility, communication, self-care, self-direction, work tolerance or work skills) that the individual is not able to engage in normal competitive employment over an extended period of time and, as a result, must rely on the provision of specialized employment opportunities by qualified nonprofit agencies for disabled individuals.

(5) "Price" means the cost to Agencies of the products and services under contracts procured under the Products of Disabled Individuals Law, as determined under OAR 125-055-0030.

(6) "Procurement List" means a listing of those nonprofit agencies for Disabled Individuals that currently are qualified, under OAR 125-055-0015, to participate in the program created by ORS 279.835 to 279.850 and includes, as required by ORS 279.850(1), a list of the products and services offered by QRFs and determined by the State Procurement Office, under OAR 125-055-0020, to be suitable for purchase by Agencies.

(7) "QRF" means an activity center or rehabilitation facility, certified as a community rehabilitation program or as a vocational service provider through the Oregon Department of Human Services, that the State Procurement Office has determined to be qualified under OAR 125-055-015.

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

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

## 125-055-0010

### Policy

(1) As required by ORS 279.850(1), Agencies that intend to procure a product or service that is listed on the Procurement List must procure that product or service, at the Price determined by the State Procurement Office, from a Qualified Rehabilitation Facility if the product or service is of specifications appropriate to the Agency's procurement needs and is available within the time required by the Agency.

(2) It is the policy of the Department to assist Qualified Rehabilitation Facilities (hereinafter referred to as QRFs) by administering a program to:

(a) Identify contracting opportunities in the public sector for QRFs;

(b) Ensure that QRF programs meet the standards set forth in ORS 279.835 to 279.850; and

(c) Assist and facilitate Agencies in entering into contractual relationships with QRFs for the provision of products and services.

(3) In administering the program created by ORS 279.835 to 279.850, the State Procurement Office, Agencies and QRFs shall keep in mind the purpose of the law: to encourage and assist disabled individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services.

(4) In promoting the policy of this section and ORS 279.850(2), the Chief Procurement Officer may appoint uncompensated volunteer members to serve on an advisory council for purchases from qualified rehabilitation facilities to review available information on QRF programs and to make recommendations to the Chief Procurement Officer concerning the facilitation and administration of the program under ORS 279.835 to 279.850. The Chief Procurement Officer's authority to appoint advisory council members includes the authority to remove and replace members in the Chief Procurement Officer's sole discretion. Meetings of the advisory council for purchases from qualified rehabilitation facilities are not subject to the public meetings law (ORS 192.610 to 192.710). However, to facilitate attendance by members of the public, the State Procurement Office will post, at least two business days prior to each meeting, notice of the times and places of meetings of the advisory council on a web-site maintained by the State Procurement Office. However, the State Procurement Office reserves the right to change the meeting time and place after the posting of notice of a meeting to address scheduling needs or for the convenience of participants.

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05



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## 125-055-0015

### Application for QRF Participation

(1) Initial Application. A nonprofit activity center or rehabilitation facility that seeks to participate in the program created by ORS 279.835 to 279.850 must submit a completed application to the State Procurement Office on forms prescribed by the State Procurement Office.

(2) Subsequent Annual Reapplications.

(a) A QRF that seeks to continue participation in the program after having initially been approved as qualified and placed on the Procurement List under this rule must submit a completed reapplication to the State Procurement Office each year on forms prescribed by the State Procurement Office. The QRF must submit the reapplication within 120 calendar days of the close of the QRF's fiscal year.

(b) All QRFs who have had, in the previous fiscal year of the QRF, contracts with Agencies that yielded payments to the QRF that in the aggregate exceeded \$20,000 (Twenty Thousand Dollars) in that fiscal year, must also submit the audit report required by OAR 125-055-0035 for that fiscal year with their annual reapplications. A QRF who must file an annual reapplication must submit the reapplication, together with the audit report, within 120 days of the close of the QRF's fiscal year.

(3) The information to be submitted on or as part of the application or annual reapplication must contain all information required by the application or reapplication form, including:

(a) Corporate or organizational information, including legal name, business or mailing address and other information to permit communication with the organization, name of the executive director or other chief managing officer, federal tax identification number and documentation of the organization's status as a nonprofit entity.

(b) Information concerning the organization's status as an activity center or rehabilitation facility that is certified as a community rehabilitation program or as a vocational service provider through the Oregon Department of Human Services.

(c) Information concerning the organization's certification status under the federal Javits-Wagner-O'Day Act program operated under 41 USC §§46 to 48c.

(d) For initial applications, information concerning the organization's employment of Disabled Individuals during the organization's last fiscal year, if the organization has operated as a QRF throughout the last fiscal year, including information sufficient to determine whether the organization qualifies or will qualify as a nonprofit agency for Disabled Individuals under the direct labor requirement of ORS 279.835(5). If the applicant has not operated as a QRF throughout its last fiscal year, then the applicant must submit information concerning its planned employment of Disabled Individuals in the next fiscal year of the applicant, including the measures it will take to ensure that the applicant will comply with the direct labor requirement of ORS 279.835(5) in the next fiscal year of the applicant. To qualify under this subparagraph, an applicant is required, during the applicant's fiscal year, to employ Disabled Individuals for not less than 75 percent of the total work hours of direct labor required for the manufacture or provision of the products or services produced by the applicant. The 75 percent direct labor requirement need not be met with respect to each product or service provided by the applicant, or with respect to each contract the applicant enters into under this program.

(e) If the applicant has contracts with Agencies that yield payments to the applicant that in the aggregate exceed \$20,000 (Twenty Thousand Dollars) in the applicant's fiscal year, information concerning whether the applicant has had an independent audit of the applicant's direct labor and, if so, the date of the most recently conducted audit and a true and correct copy of the audit report. An applicant who must submit an annual reapplication must submit a true and correct copy of the audit report for the preceding fiscal if the applicant's contracts exceeded the \$20,000 threshold in that fiscal year.

(f) A listing of all contracts that exceed \$500 (Five Hundred Dollars) the applicant has with Agencies that includes the identity of each contracting Agency, the type of product or service provided under each contract, the annual contract amount for each contract year and the estimated contract amount for the current contract year.

(g) Certifications by an authorized officer of the applicant that:

(A) The applicant qualifies as a "nonprofit agency for disabled individual" as defined in ORS 279.835;

(B) All individuals claimed to be employed as Disabled Individuals by the applicant have been determined to be Disabled Individuals as documented by information maintained by the applicant in its file on each such individual.

(C) The applicant complies with all applicable occupational health and safety standards required by the laws of the United States or of the State of Oregon.

(D) The applicant will conduct an annual direct labor audit by an independent certified public accountant to determine the applicant's compliance with ORS 279.835(5)(c), if the payments to the applicant under Agency contracts in the aggregate exceed \$20,000 (Twenty Thousand Dollars) annually;

(E) The applicant will comply, if any of its products or services are placed on the Procurement List, with the applicable requirements of ORS 279.835 to 279.850 and OAR 125-055-0005 to 125-055-0040; and

(F) The applicant has submitted no false or misleading information in connection with the application and will submit no false or misleading information in connection with the submission of information concerning the applicant's continuing qualifications to maintain the listing of its products or services on the Procurement List.

(4) The State Procurement Office will evaluate each application submitted by an entity seeking a determination of its QRF status and addition to the Procurement List. The State Procurement Office reserves the right to require applicants to provide information in addition to the information required by this rule that is pertinent to making the determination whether an applicant is qualified.

(5) In conducting the evaluation, the State Procurement Office will consider the particular facts and circumstances in each case to determine whether the applicant is qualified for QRF status and addition to the Procurement List under the following standards:

(a) The applicant must be organized under the laws of the United States or of the State of Oregon and must be operated in the interest of Disabled Individuals;

(b) The net income of the applicant must not inure, in whole or in part, to the benefit of any shareholder or other individual;

(c) The applicant must comply with all applicable occupational health and safety standards required by the laws of the United States or of the State of Oregon; and

(d) The applicant must satisfy the direct labor requirement of ORS 279.835(5) or, in the case of a start-up applicant, demonstrate that it will satisfy the direct labor requirement of ORS 279.835(5) in the ensuing fiscal year of the applicant.

(6) If the State Procurement Office determines that the entity is qualified, it shall send notice of QRF status to the applicant and add the applicant to the Procurement List. If the State Procurement Office does not find the applicant qualified for QRF status, it shall reject the application and notify the applicant in writing of the criteria the applicant did not satisfy or adequately demonstrate.

(7)(a) Within thirty (30) calendar days from the date of the State Procurement Office's notice of the rejection of an application or reapplication, the applicant may appeal the decision by submitting a written appeal to the State Procurement Office. The appeal shall include a copy of the State Procurement Office's notice and shall state the applicant's grounds for appealing the decision. If the applicant does not appeal the State Procurement Office's decision within the 30-day period from the date of the State Procurement Office's notice of the rejection of the application or reapplication, the applicant shall not be placed on the Procurement List or, in the case of a reapplication, on the 31st day, the applicant shall be removed from the Procurement List.

(b) On appeal, if the State Procurement Office determines that the applicant is then qualified, it shall send the applicant notice of qualification for QRF status and add the applicant to the Procurement List. If the State Procurement Office does not find the applicant qualified, it shall provide the applicant a written decision that states the reasons for that determination and that denies the applicant placement on the Procurement List or, in the case of a reapplication, removes the applicant from the Procurement List. The State Procurement Office's written decision under this subsection constitutes a final order under ORS 183.484.

(8) The State Procurement Office may re-evaluate the decision to grant approval for QRF status if the State Procurement Office discovers pertinent information that was not available when the initial decision was made. If the State Procurement Office determines that there is sufficient cause to revoke QRF status, it shall issue notice to cure to the QRF. If the QRF does not satisfactorily effect cure within 30 calendar days of the date of the State Procurement Office's notice or such longer time as may be permitted by the State Procurement Office, the State Procurement Office may then initiate proceedings to revoke QRF status by providing written notice of the proposed revocation and removal of the entity from the Procurement List. An entity may appeal the notice to cure or the proposed revocation and

# ADMINISTRATIVE RULES

removal by submitting a written appeal to the State Procurement Office in the manner provided in subsection (7) of this rule.

(9) If a QRF is removed from the Procurement List under subsections (5) to (8) of this section, no Agency shall award or renew a contract made with that QRF under ORS 279.835 to 279.850, and the removal from the Procurement List shall constitute sufficient grounds for an Agency to terminate any outstanding contract with the QRF that was established under ORS 279.835 to 279.850. The State Procurement Office will post, on a web-site or other accessible on-line posting address administered through the State Procurement Office, notice of the removal of a QRF from the Procurement List.

(10) Nothing in this rule shall be construed as prohibiting the State Procurement Office and an applicant or QRF from resorting to informal dispute resolution measures such as non-binding arbitration or mediation in addition to the appeal procedures prescribed by subsections (7) and (8) of this rule.

(11) The State Procurement Office will publish and maintain a Procurement List that identifies the nonprofit activity centers and rehabilitation facilities the State Procurement Office determines, under this section, to be qualified to participate in the program. The State Procurement Office shall distribute this Procurement List or make it available, electronically or otherwise, to all Agencies.

(12) After a denial or revocation of an applicant's or QRF's qualified status and listing on the Procurement List, the applicant or QRF may re-apply only after one year from the date the denial or revocation determination became final.

(13) Once listed on the Procurement List, a QRF will remain listed, subject to the State Procurement Office's re-examination of the QRF's qualified status each year, based on the information provided with the QRF's annual reapplication. Additionally, the State Procurement Office may terminate the listing under the procedures provided by this rule as the result of the State Procurement Office's discovery of pertinent information that was not available when the initial, or any subsequent reapplication decision was made, or if the QRF ceases to do business as a QRF.

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

## 125-055-0020

### Determination of Suitability of Product or Service

(1) The State Procurement Office will publish and maintain a Procurement List that identifies the products and services of QRFs the State Procurement Office has determined to be suitable for procurement by Agencies under this section. No Agency shall enter into or renew a contract under the QRF program created by ORS 279.835 to 279.850 for products or services that are not on the Procurement List. No QRF shall offer to contract to provide, or renew any contract to provide, under the program created by ORS 279.835 to 279.850, products and services that are not on the Procurement List.

(2) A QRF proposing to offer one or more products or services under ORS 279.835 to 279.850 shall deliver a written request to the State Procurement Office that specifies the products or services proposed to be offered.

(3) For a product or service to be suitable for addition to the Procurement List, each of the following criteria must be satisfied:

(a) Qualified Rehabilitation Facility (QRF). A QRF proposing to furnish a product or service must be a qualified nonprofit agency for disabled individuals approved under OAR 125-055-0015.

(b) Ownership. A QRF must own the product or directly provide the service that the QRF proposes to provide to Agencies through the program created by ORS 279.835 to 279.850. For example, a product or service will not be determined to be suitable for procurement by Agencies where the QRF operates merely as a broker, distributor, licensor or sales agent for another person or entity in providing a product to an Agency.

(c) Tied Products. A QRF's contract to provide a service cannot obligate an Agency to buy a product tied to that service unless the product is incidental to, or consumed in, the performance of the service.

(d) No Excessive Prices. The pricing proposed to be charged by the QRF for the product or service must not be excessive. In cases in which proposed pricing appears arguably excessive, as determined in the discretion of the State Procurement Office, the State Procurement Office may require the QRF to demonstrate that the proposed pricing is not excessive. The QRF's demonstration may include reliable evidence of comparative pricing in the market for the same or similar products or services.

(e) Purpose, Value, Capability. The QRF desiring to furnish the product or service must demonstrate to the State Procurement Office that the QRF meets the purpose of the Products of Disabled Individuals Law and State Procurement Office quality standards and delivery schedules. The QRF must demonstrate capability by submitting to the State Procurement Office a written plan that addresses:

(A) Purpose of the Law. The purpose of the law is to further the policy of this state to encourage and assist disabled individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self support and minimizing their dependence on welfare and need for costly institutionalization. To ensure that a QRF achieves this goal, the QRF must demonstrate:

(i) The extent of the labor operations to be performed in connection with the QRF's provision of the product or service; and

(ii) That appreciable value will be added to the product or service by Disabled Individuals; the term "appreciable value" means a measurable addition of value, or an objectively observable improvement, enhancement or change, to the final product or service. No product or service may be determined to be suitable for addition to the Procurement List where the process of the manufacture, assembly or production of the product or of the rendition of the service contains or is affected by any procedure, device or artifice under which the work of Disabled Individuals does not contribute, in a substantial, economically meaningful manner, to the value of the product or to the performance of the service, or under which the work of Disabled Individuals is not a logical element of the chain of production.

(iii) The range of salaries, rates of pay or other applicable measure of compensation that the QRF will pay for work performed in providing the product or services proposed.

(B) Subcontractor Disclosure. The QRF must disclose subcontractor utilization, partnerships or planned joint ventures, if any, the character and portion of the labor to be performed by, and the equipment to be used or supplied by, any subcontractor, partner or joint venturer (collectively, "subcontractor"). If a subcontractor performs direct labor or provides personnel that perform direct labor in the manufacture or assembly of a product or in the provision of a service to be provided to an Agency under the program created by ORS 279.835 to 279.850, the QRF must submit reliable documentation that demonstrates that:

(i) The combined productive activities of that subcontractor and the QRF in the performance of the subcontract between them together meet the standards of OAR 125-055-0015(3)(d) and 125-055-0020(3)(e)(A)(ii); and

(ii) The performance of work by non-QRF participants and persons who are not Disabled Individuals will not cause the QRF that participates in such a combination to violate the direct labor requirement of OAR 125-055-0015(3)(d) or result in a violation of OAR 125-055-0020(3)(e)(A)(ii). For purposes of this subparagraph, a person or entity that merely serves as a supplier of raw materials, parts or components of a product, or of supplies that are used or consumed in the performance of a service, is not a subcontractor. A person or entity that only leases facilities or productive equipment to a QRF, and provides no labor or personnel that participate in the manufacture or assembly of a product or in the provision of a service, is not a subcontractor.

(C) Quality Standards and Delivery Schedules. The QRF must demonstrate that the QRF has the capability to meet the applicable specifications and to make the product or services available within the time required for supplying Agencies.

(D) Additional Information. The State Procurement Office may require other pertinent data in the QRF plan such as the projected employment potential, start up costs and estimated cost recovery, product/service pricing, market research conducted by the QRF for the product or service, if any, identification of business space dedicated to the product or service, and other pertinent information that may be requested by the State Procurement Office. In conducting determinations of suitability, the State Procurement Office may conduct on-site investigations of the QRF's work-sites and production processes.

(4) Based on the request, including the written plan required by subparagraph (3)(e) of this rule, and any additional information submitted in response to the State Procurement Office's request under subparagraph (3)(e)(D), the State Procurement Office will determine whether the proposed product or service satisfies the criteria in subsection (3). If the State Procurement Office determines that the product or service satisfies the criteria in subsection (3), it shall record that determination on a form prescribed by the State Procurement Office. If the State Procurement Office determines that the product or service does not satisfy the criteria in sub-

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section (3), it shall notify the requesting party in writing of the criteria the QRF did not meet or adequately demonstrate that it met.

(5) Within ten (10) calendar days from the date of the State Procurement Office's notice of the criteria that a requested product or service failed to meet or that the QRF failed to satisfactorily demonstrate that it met, the QRF may appeal the decision by submitting a written appeal to the State Procurement Office. The appeal shall include a copy of the State Procurement Office's notice and shall state the QRF's grounds for appealing the decision. On appeal, if the State Procurement Office determines that the product or service satisfies the criteria, it shall send notice to the QRF of its decision and add the product or service to the Procurement List. If the State Procurement Office does not find that the product or service satisfies the criteria, it shall provide the QRF a written decision that states the reasons for that determination. The State Procurement Office's written decision under this subsection shall constitute a final order under ORS 183.484.

(6) At least fourteen (14) calendar days prior to the effective date of the listing of a product or service on the Procurement List, the State Procurement Office shall give notice of the proposed listing on an accessible on-line posting address administered through the State Procurement Office. A person or entity who will be adversely affected by the listing in its ability to compete for public contracts for the product or service proposed to be listed may, within the fourteen-day period, submit a written protest of the listing of the product or service to the State Procurement Office. The written protest must state the facts that demonstrate how the listing will adversely affect the person's or entity's ability to compete for public contracts for the product or service proposed to be listed and must demonstrate how the product or service to be listed fails to satisfy the criteria stated in subsection (3) of this rule. If the State Procurement Office receives no protest concerning the proposed listing by the close of business on the fourteenth day after the first day on which the State Procurement Office first posted the form, then the listing shall automatically become effective on the next business day after the fourteenth day.

(7) If the State Procurement Office receives a written protest concerning the proposed listing of a product or service from a person or entity who has demonstrated in writing that it will be adversely affected by the listing in its ability to compete for public contracts for the product or service proposed to be listed, the State Procurement Office will consider the protest and issue a written response to the protest. The State Procurement Office will not consider a protest not made in writing and received by the State Procurement Office by the close of business on the fourteenth day after the first day on which the State Procurement Office first posted the proposed listing under subsection (6) of this rule. In considering a timely protest, the State Procurement Office may request further information and comment from the complaining party and from the QRF that submitted the application for the listing of the product or service.

(a) The State Procurement Office's response to the protest will confirm the listing of the product or service, modify the listing of the product or service, or withdraw the proposed listing of the product or service. The State Procurement Office will make its written determination available, by mail or by electronic means, to the complaining party and to the QRF whose product or service is the subject of the protest.

(b) A protester or QRF who is adversely affected or aggrieved by the State Procurement Office's response under this subsection may request that the State Procurement Office institute contested case proceedings under ORS 183.413 to 183.470 by delivering to the State Procurement Office a written request for a contested case within fourteen (14) calendar days of the date of issuance of the response. The written request for a contested case must describe how the requesting party is adversely affected or aggrieved by the response and why the Division's response is incorrect. The contested case will be limited to the issues raised before the State Procurement Office in the protest proceedings.

(8) Nothing in this rule shall be construed as prohibiting the State Procurement Office, a QRF and a protester from agreeing to resort to informal dispute resolution measures such as non-binding arbitration or mediation in addition to the appeal procedures prescribed by subsections (5) and (7) of this section.

(9) No determination under this section that a product or service is suitable and no placement of a product or service on the Procurement List shall act to displace a contractor under an existing public contract with an Agency for the same product or service prior to the expiration or other termination of the contractor's contract with the Agency.

(10) Once a product or service has been placed on the Procurement List, it will remain on the list until:

(a) Five years have elapsed from the date of the listing of the suitability determination, or such earlier time as the State Procurement Office

may prescribe for expiration of the listing at the time it makes the determination of suitability;

(b) The State Procurement Office has determined, under OAR 125-055-0020 or 125-055-0025, that the product or service is not suitable for procurement by Agencies;

(c) The product or service no longer is offered by the QRF that requested a determination of its suitability; or

(d) The QRF is removed from the Procurement List.

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

## 125-055-0025

### Review of Suitability Determinations

(1) The State Procurement Office reserves the right, to be exercised in its sole discretion, to review suitability determinations as changes in pertinent circumstances, which include but are not limited to changes in rules, laws, market conditions and QRF contractor performance, occur. Should the State Procurement Office identify information that was not available during the initial determination that negatively impacts a previous determination of suitability, it may notify the QRF and conduct a review of the determination. The review may result in removal of the product or service from the Procurement List. A QRF may appeal a decision to remove a product or service from the Procurement List in the manner provided in OAR 125-055-0020(5).

(2) The State Procurement Office may review a determination that a product or service is suitable if the State Procurement Office discovers pertinent information that was not available when the initial decision was made. Within 10 calendar days after the receipt of written notice from the State Procurement Office of a determination to remove a product or service from the listing, the affected QRF may appeal the determination by submitting a written appeal to the State Procurement Office. The appeal shall include a copy of the State Procurement Office's notice, and the QRF's grounds for appealing the determination. If the State Procurement Office determines, on reconsideration, that the product or service is suitable for procurement by public agencies, the State Procurement Office shall send notice of approval to the QRF and maintain the publication of the product or service on the Procurement List. If the State Procurement Office finds the product or service not suitable for procurement by public agencies under the criteria of OAR 125-055-0020(3), the State Procurement Office shall give written notice to the QRF of the criteria that were not satisfied. The State Procurement Office's written decision under this subsection shall constitute a final order under ORS 183.484.

(3) In no event may an Agency and a QRF agree to change the specifications in, or amend, a contract established under the program created by ORS 279.835 to 279.850 in a manner that alters the character or scope of the product or service so that the product or service no longer is essentially the same product or service that was the subject of the determination of suitability. In cases where such a change is sought, the Agency and the QRF must first request and receive from the State Procurement Office a new or revised determination that the product or service, as changed, is suitable under this section. In cases where the change in specifications or amendment appears to affect the Price of a product or service as determined under OAR 125-055-0030, the State Procurement Office also may conduct a new Price determination in response to the request.

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

## 125-055-0030

### Determination of Price

(1) Under ORS 279.845(1)(a), the State Procurement Office shall determine the Price of products and services offered for sale to Agencies that the State Procurement Office has determined to be suitable for procurement by Agencies and placed on the Procurement List.

(2) Determination of Price. The Price determined by the State Procurement Office shall be a reasonable and adequate Price that will recover for the QRF the cost of:

(a) Raw materials;

(b) Labor;

(c) Overhead that is allocable to the particular product or service for which the Price determination is being made, including the actual, reasonable costs of complying with the independent audit requirements of OAR 125-055-0040(1) (For purposes of this subparagraph, overhead cost is allocable to a particular product or service to the extent the overhead costs are



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chargeable to the production of the product or the performance of the service in accordance with the relative benefits received by the product or service program as compared to the overall activities of the QRF);

(d) Delivery costs; and

(e) An amount held in reserve for inventory and equipment replacement.

(3) Initial Price Determination Procedures:

(a) For products or services the State Procurement Office has determined to be suitable for purchase by Agencies, an Agency or the State Procurement Office shall provide the QRF with a solicitation document and an annotated pricing tabulation that covers the period of the proposed contract for those products or services, the expiring contract, or the most recent solicitation. Additionally, an Agency or the State Procurement Office shall provide the QRF with the scope of work and specifications, if any, that will cover the initial period during which the QRF expects to provide the product or service.

(b) The QRF shall submit its proposed Price to the Agency or the State Procurement Office, based on the volume or scope of the work and specifications acceptable to the Agency, as prescribed in the proposed contract between the QRF and an Agency. The contract may propose to serve a single Agency or multiple Agencies. Where the contract proposes to serve multiple Agencies, the QRF's disclosure of costs under subparagraph (c) of this subsection must address the costs of serving all Agencies the QRF proposes to serve under the contract. The State Procurement Office reserves the right to review and amend a Price determination in light of reductions in or additions to the Agencies served under a multiple Agency contract.

(c) In submitting its proposed Price to the Agency or the State Procurement Office, the QRF must make full disclosure of known costs. The disclosure must include documentation, on a form prescribed by the State Procurement Office, that the costs proposed will result in a Price that will permit the QRF to recover the amounts prescribed in subsection (2) of this section and ORS 279.845(1)(a).

(d) As part of the disclosure, an authorized officer of the QRF must certify that the costs claimed are, to the best of the officer's knowledge, reasonable and adequate, and that the proposed Price will permit the QRF to recover the amounts prescribed in subsection (2) of this section.

(e) If the QRF and the Agency agree on the terms and conditions of a proposed contract and the price for the products or services to be provided under the proposed contract, the QRF and the Agency must present the proposed contract (including the agreed price) to the State Procurement Office for review and a determination of the Price.

(4) Based on the volume or proposed scope of work and the costs disclosed by the QRF under subsection (3) of this section, the State Procurement Office will determine a Price for the products or services offered under the proposed contract. If the State Procurement Office regards the determined Price to be reasonable and adequate to permit the QRF to recover the amounts prescribed in subsection (2) of this section, then it will notify the QRF and the Agency of the Price.

(5) In determining a reasonable and adequate Price of a product or service, the State Procurement Office may consider:

(a) Prices of similar products or services purchased in comparable quantities by federal agencies under the authorized federal program (Javits-Wagner-O'Day Act);

(b) Prices of products or services of similar specifications and quantities previously purchased by government agencies from responsible contractors engaged in the business of selling similar products or services;

(c) Prices that private businesses pay for similar products or services in similar quantities of comparable scope and specifications if purchasing from a reputable vendor engaged in the business of selling similar products or services;

(d) Prices of products or services of similar specifications and quantities purchased by Agencies from QRFs under the program created by ORS 279.835 to 279.850.

(6) A QRF and an Agency shall not execute or implement any contract under the program created by ORS 279.835 to 279.850 until the State Procurement Office has transmitted notice of the Price determined by the State Procurement Office to the Agency and the QRF.

(7) Re-determinations of Price. A Price established by the State Procurement Office shall apply for the initial term or period of the contract unless otherwise approved by the State Procurement Office. The State Procurement Office may re-determine a Price at the request of a QRF or Agency, or at the discretion of the State Procurement Office. Until the State Procurement Office approves a new Price, the QRF shall continue to provide, at the established Price, the service or product in accordance with the scope of work that was the basis for establishing the existing Price. The

Agency shall not pay or agree to pay the QRF any amount other than the Price approved by the State Procurement Office. The State Procurement Office reserves the right, during the process of re-determining a Price, and subject to existing contract rights of the QRF and Agency, to suspend the Price and set an interim Price; such action may trigger a review of the suitability determination for the affected product or service under OAR 125-055-0025.

(a) In re-determining Price, the State Procurement Office will consider the factors in subsections (2) and (3) of this rule. The State Procurement Office also may take into consideration changes that have taken place since the last Price determination that are pertinent to re-determining Price.

(b) Each re-determination or adjustment of Price shall be based on changes in the scope of work, changes in the costs of producing the product or performing the service, or both. If the proposed adjustment is based on changes in QRF cost factors, the QRF shall submit to the State Procurement Office and the Agency a request for a Price change showing a breakdown of cost changes with appropriate documentation, as requested by the State Procurement Office or Agency. As part of the request and documentation, an authorized officer of the QRF must certify that the proposed changes in costs are, to the best of the officer's knowledge, genuine, reasonable, and adequate, and that the proposed Price will permit the QRF to recover the amounts prescribed in subsection (2) of this section and ORS 279.845(1)(a). The Price established by the State Procurement Office for a product or service shall remain in effect until the State Procurement Office approves a new Price.

(c) Agencies and QRFs may not make material changes (changes that affect the cost of providing the products or services in more than a negligible manner) to the specifications of a contract entered into under the program created by ORS 279.835 to 279.850 unless the changes are in writing and have been submitted to the State Procurement Office for a re-determination of Price. The following information reporting is required of the Agency in order to assist the State Procurement Office in Price re-determinations based on changes in contract specifications:

(A) In the event that the Agency or State Procurement Office wishes to change specifications from the most recent solicitation for the product or service, the Agency or State Procurement Office shall notify the QRF in writing of the specific changes in the scope of work or other conditions which will be required during the new contract period.

(B) Upon receipt of notice of change, the QRF shall submit a Price recommendation and Price change request under subparagraph (7)(b) of this section to the Agency and State Procurement Office for review and a re-determination of the Price by the State Procurement Office.

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279.015(1)(b) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

## 125-055-0035

### Audits

(1) To maintain qualifications and listing on the Procurement List under OAR 125-055-0015, all QRFs whose total annual Agency contract value exceeds \$20,000 must conduct an annual audit of direct labor to determine compliance with ORS 279.835(5)(c). Each such QRF must submit to the State Procurement Office an audit report and letter of attestation, on forms prescribed by the State Procurement Office, regarding each annual audit. Under the annual reapplication requirement of OAR 125-055-0015(2), a QRF must submit, with each reapplication, an audit report and letter of attestation for the preceding fiscal year of the QRF. Each QRF shall ensure that each of its contracts entered into with an Agency under the program created by ORS 279.835 to 279.850 includes a provision that requires the QRF, if the QRF's total annual value of contracts with Agencies exceeds \$20,000, to conduct an annual audit of direct labor.

(2) The audit shall be conducted by an independent certified public accountant for the same fiscal year as the QRF's annual financial audit.

(3) The audit shall consist of an auditor's examination of the QRF, conducted in accordance with generally accepted auditing principles.

(4) For purposes of subsection (5) of this section:

(a) "Direct labor" means all work required for the manufacture, preparation, processing and packing of products produced by a QRF and all work performed in the rendition of services by a QRF, but does not include supervision, administration or shipping. "Direct labor also does not include client-type services provided by a QRF to Disabled Individuals served by the QRF, such as job training and therapeutic services.

(b) "Supervision" means the direction, assignment, instruction and oversight of individuals performing direct labor, and inspection of work performed or products for quality assurance.

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(c) "Administration" means the management activities of a QRF that include acquisition of equipments, parts, supplies and inventory, handling of the entity's payroll, personnel and accounting activities, executive decision-making and other business activities, generally of a centralized nature, that do not entail the "hands-on" production of a product or the performance of a service.

(d) "Shipping" means the transportation of a product to the site designated by the acquirer of the product or the transportation of workers to site at which they will perform services for a customer.

(5) The examination and resultant audit report must be based on the following records and information:

(a) A listing of all products and services provided by the entity in the QRF's fiscal year, including those products and services were procured by Agencies under and 279.835 to 279.850 and those which were procured outside the program created by those statutes ORS 279A.025(4),

(b) A list of all individuals covered by the audit scope employed by the QRF who are Disabled Individuals who provided direct labor required for the production of products or the performance of services during the fiscal year that is the subject of the audit examination, including employee name, unique employee identification number, job description and disability status.

(c) A list of all individuals covered by the audit scope employed by the QRF, whether paid or unpaid, who are not Disabled Individuals and who provided direct labor required for the production of products or the performance of services during the fiscal year that is the subject of the audit examination, including employee name, unique employee identification number and job description.

(d) A compilation of the total hours of direct labor actually performed by the QRF during the fiscal year.

(e) Payroll reports for all individuals covered by the audit scope employed by the QRF during the fiscal year, including employee name, social security number, work hours paid, and vacation hours, sick leave hours, and training hours. Hours worked must be segregated from hours paid but not worked.

(f) Time and billing records showing direct hours worked by each employee in the manufacture or provision of goods and services.

(g) Disability status documentation. The QRF must have documentation on file for each employee who is or who is claimed to be a Disabled Individual. The file must include documentation from an officially accredited source that each such person has been determined to be a Disabled Individual as defined in OAR 125-055-0005. The acceptable forms of disability documentation are:

(A) Department of Human Services/Seniors and People with Disabilities Office of Licensing and Quality Care referrals;

(B) Commission for the Blind referrals;

(C) Department of Human Services/Community Human Services, Office of Vocational Rehabilitation Services referrals;

(D) Competitive Employment statements signed by a physician or other Accredited Vocational Consultant stating that the employee is a Disabled Individual as defined in OAR 125-055-0005;

(E) Certifications that the employee is legally deaf and is a Disabled Individual as defined in OAR 125-055-0005;

(F) Certifications that the employee is eligible for Supplemental Security Income (SSI) or Social Security for the Disabled (SSDI) benefits.

(6) The audit report must address the following elements:

(a) A determination whether the QRF's time, billing and payroll records are sufficiently complete and reliable to demonstrate compliance with the 75 percent direct labor requirement of ORS 279.835(5)(c). The records must permit segregation of direct labor hours from other hours worked and paid, and allow for assessment of direct hours worked by employees with disabilities, as well as by employees without disabilities.

(b) If the certified public accountant finds the records to be sufficiently complete and reliable, the certified public accountant must test the QRF's calculation, for the entire applicable fiscal year, of the portion of total direct labor hours that were worked by employees with disabilities. Only direct hours worked shall be included in the calculation. Vacation, sick leave, holiday, training hours, and any other hours paid but not worked by the employee are to be excluded from the calculation.

(c) The certified public accountant must apply sufficient statistical sampling techniques to obtain an eighty percent level of confidence with a precision of plus or minus ten percent that:

(A) The direct labor by Disabled Individuals during the QRF's fiscal year satisfied the 75 percent direct labor requirement under ORS 279.835(5) and OAR 125-055-0015(2)(d)(A); and

(B) The hours reported as worked by persons with disabilities were worked by persons whose disabilities were documented under subparagraph (5)(g) of this rule.

(d) A determination whether adequate actions have been taken to resolve any prior adverse audit report findings or recommendations.

(e) The independent certified public accountant that conducted the annual audit shall sign an attestation that the QRF complied or did not comply with the 75 percent direct labor requirement of ORS 279.835(5)(c) during the fiscal year period for which the annual financial audit was conducted. If the Certified Public Accountant attests that the QRF did not comply with the requirement of ORS 279.835(5)(c), the report must include a concise description of the character and extent of the noncompliance.

(7) Within 120 calendar days after the close of the QRF's fiscal year, each QRF must submit the direct labor audit attestation report for the preceding fiscal year, signed and dated by the independent Certified Public Accountant and by an officer of the QRF's board of directors, to the State Procurement Office. A QRF that must submit an annual reapplication under OAR 125-055-0015(2) must submit the reapplication with its most recent annual direct labor audit report and letter of attestation.

(8) Failure to comply with the requirements of this section by a QRF shall constitute sufficient grounds to terminate the QRF's listing on the Procurement List under OAR 125-055-0015 and shall constitute sufficient grounds for an Agency to terminate, or to suspend performance of the work under, a contract with the QRF.

(9) Failure to comply with the 75 percent direct labor requirement of ORS 279.835(5)(c) shall constitute sufficient grounds to terminate the QRF's listing on the Procurement List under OAR 125-055-0015 and shall constitute sufficient grounds for an Agency to terminate, or to suspend performance of the work under, a contract with the QRF.

(10) The cost of the annual audit required by this rule shall be considered an overhead expense that the QRF may recover and which must be taken into account in determining the Price under OAR 125-055-0030.

(11) If the State Procurement Office determines that a QRF is in material noncompliance with any requirement imposed on it by OAR 125-055-0015 to 125-055-0040, including the qualifications requirements of OAR 125-055-0015, subsection (7) of this rule, or the direct labor requirement of ORS 279.835(5)(c), the State Procurement Office will issue, to the non-complying QRF, a written notice to cure the noncompliance. The written notice will identify the requirement or requirements with which the QRF does not comply, state the reasons that the QRF is not in compliance with the requirements, and prescribe a time period of not less than ninety (90) calendar days, or such other time as may be permitted by the State Procurement Office, within which the QRF must achieve compliance.

(a) A QRF receiving notice of noncompliance under this subsection must respond in writing, within thirty (30) calendar days of the date of the State Procurement Office's notice, to the State Procurement Office. The response may:

(A) State the reasons, with supporting documentation, why the QRF is not out of compliance with the requirements, if the QRF believes that it is in compliance;

(B) Present a plan of action to be taken by the QRF to achieve compliance and propose a date within which it will achieve compliance;

(C) Request an extension of the time within which the QRF will achieve compliance;

(D) Report that the QRF has achieved compliance and state the actions the QRF has taken to achieve compliance.

(b) If the QRF does not submit a written response within the 30-day period from the date of the written notice issued under subsection (11) of this rule or such additional time as may be permitted by the State Procurement Office, the State Procurement Office may terminate the QRF's listing on the Procurement List under OAR 125-055-0015 by issuing to the QRF written notice of the proposed termination and removal of the QRF's products and services from the Procurement List.

(c) The State Procurement Office reserves the right to require a QRF, as part of the required cure or as part of a plan of action to attain compliance, to submit to the State Procurement Office quarterly audit reports concerning the QRF's compliance with the direct labor requirement of ORS 279.835(5)(c). If a QRF that is subject to this requirement satisfies the direct labor requirement in the first two consecutive quarterly audits, the State Procurement Office may waive the quarterly audit requirement for that QRF. However, if the QRF next succeeding annual audit discloses that the QRF failed to satisfy the direct labor requirement, the State Procurement Office will institute disqualification proceedings by issuing to the QRF a notice of termination under subparagraph (d) of this subsection.

# ADMINISTRATIVE RULES

(d) If the QRF fails to achieve compliance with the violated requirements within the time prescribed in the State Procurement Office's written notice issued under subsection (11) of this rule, within the time proposed in a QRF's plan of action approved by the State Procurement Office, or within the time permitted under any extension of time granted by the State Procurement Office, the State Procurement Office will terminate the QRF's listing on the Procurement List under OAR 125-055-0015 by issuing to the QRF written notice of that termination and of the removal of the QRF's products and services from the Procurement List.

(e) After any termination of a QRF's listing on the Procurement List under OAR 125-055-0015, the QRF shall not enter into or renew any contracts under the program created by ORS 279.835 to 279.850. Any termination of a QRF's listing on the Procurement List also shall constitute sufficient grounds for any Agency to terminate any contract with the QRF.

(f) If the QRF requests, within ten (10) calendar days of its receipt of notice of termination, an informal hearing concerning the validity of the grounds for termination stated in the notice, the termination will not become effective until the conclusion of the informal, non-contested case hearing process. If the QRF fails to request a hearing within this ten-day period, the termination shall become effective on the eleventh day.

(A) As the result of the hearing process, the State Procurement Office may either reach written agreement with the QRF or, if no agreement is reached, issue an order that resolves the issues raised by the QRF and, if no resolution satisfactory to the State Procurement Office results from the hearing process, the order may provide for termination of the QRF's listing on the Procurement List under OAR 125-055-0015 and removal of the QRF's products and services from the Procurement List.

(B) After any hearing, the State Procurement Office may issue an order that resolves the issues raised by the QRF and, if the determination is adverse to the QRF, the order may provide for termination of the QRF's listing on the Procurement List under OAR 125-055-0015 and removal of the QRF's products and services from the Procurement List. The State Procurement Office's written decision under this subsection shall constitute a final order under ORS 183.484.

(g) After any termination of a QRF's listing on the Procurement List under OAR 125-055-0015, the QRF shall not enter into or renew any contracts under the program created by ORS 279.835 to 279.850. Any termination of a QRF's listing on the Procurement List also shall constitute sufficient grounds for any Agency to terminate any contract with the QRF.

(h) After the passage of one year after the effective date of a termination of a QRF's listing on the Procurement List under this section, a terminated QRF may again make an application to be listed as a QRF under OAR 125-055-0015.

Stat. Auth.: ORS 279.845(1) & 184.340  
Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855  
Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

## 125-055-0040

### General Provisions

(1) Contracting Authority. The Department of Administrative Services and other Agencies must contract directly with a QRF for a contract to qualify for the exception from the competitive procurement requirement in ORS 279.015(1)(b) for contracts under the program created by ORS 279.835 to 279.850. Contracts between multiple Agencies and a QRF satisfy this requirement that the Agencies must contract directly with a QRF.

(2) Contract Disputes. Contract performance issues and disputes arising out of contracts entered into under the program created by ORS 279.835 to 279.850, such as disputes concerning timely delivery of products or performance of services or compliance with specifications, must be resolved exclusively between the QRF and the Agency that is a party to the contract, and will not be resolved by the State Procurement Office (except where the Department of Administrative Services is a party to the contract with the QRF).

(3) Temporary Services. In each contract for the provision of temporary services entered into by a state agency under the program created by ORS 279.835 to 279.850, the QRF must monitor the prior and current work assignments of its employees who work under the contract to ensure that no employee performs services for the state in excess of a total of 1,040 hours in a 12-month period. A QRF temporary service provider must obtain a written statement from the contracted employee attesting to the accumulative hours worked for any state agency under the QRF contract or any other QRF provider plus any other hours worked as a state temporary employee with the state during the 12-month period. Contracts for the provision of temporary services by QRFs may be used only to meet temporary, emer-

gency, non-recurring, unexpected, or short-term workload demands of state agencies.

(4) Competitive Public Contract Bidding by a QRF. If a QRF submits, to any Agency, a competitive bid, proposal, quote or other offer ("offer") in a competitive procurement for a public contract, then regardless of whether the offer was accepted, that QRF may not, at any time during the initial term of the contract for which the QRF submitted a bid, proposal or offer, make any claim to the Agency that instituted the procurement for the public contract that the product or service that was the subject of the offer should have been subject to the set-aside program created by ORS 279.835 to 279.850.

(5) A QRF shall not enter into a public contract with an Agency under the program created by ORS 279.835 to 279.850 unless the contract complies with OAR 125-055-0005 to 125-055-0040 and the products or services that are the subject of the contract are listed on the Procurement List. Any liabilities or expenses that may arise from the establishment of a contract that violates this subsection shall be those exclusively of the QRF and Agency, respectively, that purports to enter into such a contract.

(6) QRF Records.

(a) Each QRF shall maintain accurate and correct records of the direct labor hours performed in the nonprofit agency by each worker in a manner sufficient to determine compliance with the 75 percent direct labor requirement of ORS 279.835(5)(c).

(b) Each QRF shall make its records available, at any reasonable time, for inspection by the State Procurement Office, the Office of the Oregon Secretary State, and their officers and representatives.

(7) Application of These Rules.

(a) OAR 125-055-0015 shall apply to applications and annual reappraisals for participation in the program created by ORS 279.835 to 279.850 that are presented to the State Procurement Office, or which are due, after August 31, 2003. OAR 125-055-0020 shall apply to requests for determinations that a product or service is suitable for addition to the Procurement List that are presented to the State Procurement Office after August 31, 2003. OAR 125-055-0030 shall apply to determinations of Price first submitted to the State Procurement Office after August 31, 2003. OAR 125-055-0035 shall apply to direct labor audit reports that are due under OAR 125-055-0035(7) after August 31, 2003.

(b) For determinations of suitability of a product or service that were made prior to the effective date of these rules, the maximum five-year term of determinations of suitability under OAR 125-055-0020(10)(a) shall expire five years from the effective date of these rules.

(c) The adoption of these rules shall not affect the validity of:

(A) Any determination that a QRF was qualified for participation in the program;

(B) Any determination that a product or service was suitable for addition to the Procurement List; or

(C) Any determination of Price; made prior to the effective date of these rules.

(8) The State Procurement Office reserves the right to extend any deadline or time within which a QRF or a party to any proceedings under OAR 125-055-0015 to 125-055-0040 must take any action under those rules if the affected party applies in writing for relief to the State Procurement Office and demonstrates in writing that special circumstances warrant the grant of such relief. For the purpose of this subsection, special circumstances that warrant the grant of relief include practical exigencies that reasonably can be regarded as imposing a substantial, practical impediment to the QRF's or party's ability to meet the deadline or achieve the correction of a violation of rules. Special circumstances are circumstances beyond the reasonable control of the organization including, but not limited to, the illness or other incapacity of key officers of the organization seeking relief, emergency reorganizations or replacements of the corporate structure, board of directors or executive officers of the organization, acts of God and comparable practical impediments to a person or organization's ability to meet a deadline or achieve the correction of a violation of rules. The grant or denial of relief under this subsection must be determined by the Chief Procurement Officer or, in the absence of the Chief Procurement Officer, by an officer of the State Procurement Office who specifically has been delegated that task. The State Procurement Office also reserves the right to waive or to permit the correction of minor or technical violations of OAR 125-055-0015 to 125-055-0040.

Stat. Auth.: ORS 279.845(1) & 184.340  
Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855  
Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05



# ADMINISTRATIVE RULES

## 125-055-0045

### Purchases under ORS 279.855

(1) Policy. QRFs, residential programs and public benefit corporations recognized by ORS 279.855 may acquire equipment, materials, supplies and services under the same conditions as state agencies that, under ORS 279.712(2), are not subject to the requirement that the Oregon Department of Administrative Services provide for their acquisition of such items. Accordingly, QRFs, residential programs and public benefit corporations must enter into an agreement with the department in order to participate in the Oregon Cooperative Purchasing Program. The agreement must have substantially the same form, content and obligations as the standard agreement prescribed by the State Procurement Office that state agencies must execute in order to participate. In addition, QRFs, residential programs and public benefit corporations must comply with the applicable subsections of this rule to acquire equipment, materials, supplies or services under ORS 279.855.

(2) QRFs that currently are approved under OAR 125-055-0015 may purchase equipment, materials, supplies and services through the State Procurement Office in the same manner as state agencies, as provided in ORS 279.545 to 279.746 and 279.820 to 279.824.

(3) A residential program seeking to purchase equipment, materials, supplies or services through the State Procurement Office under ORS 279.855 must make a written request to the State Procurement Office to which is attached a true and correct copy of its currently effective contract with the Department of Human Services to provide services to youth in the custody of the state. In addition, the residential program must submit a letter from the Oregon Department of Human Services, on the letterhead of that department or of a division of that department that contains the following information:

(a) The services the residential program must provide, including the scope of those services, under the currently effective contract with the Department of Human Services;

(b) The Department of Human Services contract number;

(c) The starting date and expiration date of the contract; and

(d) The name, original signature, mailing address and telephone number of the Department of Human Services' Contract Administrator for the contract.

(4) A public benefit corporation seeking to purchase equipment, materials, supplies or services through the State Procurement Office under ORS 279.855 must make a written request to the State Procurement Office to which is attached:

(a) A certification by an authorized officer of the public benefit corporation that the applicant qualifies as a public benefit corporation under ORS 65.001;

(b) A true and correct copy of documentation, which may include the corporation's currently effective articles of incorporation, that demonstrates that the corporation is tax exempt under §501(c)(3) of the Internal Revenue Code and that the corporation is not a religious corporation as defined in ORS 65.001;

(c) A true and correct copy of at least one currently effective contract between the public benefit corporation and a state agency or unit of local government by which the corporation's contract performance is funded at least in part with state funds; and

(d) A letter from the state agency or unit of local government that confirms the existence and effectiveness of the contract submitted under subparagraph (c) of this subsection, on the letterhead of the state agency or unit of local government, that contains the following information:

(A) The services the public benefit corporation must provide, including the scope of those services, under the contract submitted under subparagraph (c) of this subsection;

(B) The contract number;

(C) The starting date and expiration date of the contract; and

(D) The name, original signature, mailing address and telephone number of the state agency or unit of local government's Contract Administrator for the contract.

(5) Neither the State Procurement Office nor the State of Oregon shall be liable for any obligation or debt entered into on behalf of a QRF, a residential program or a public benefit corporation, and likewise shall not be liable for any obligation or debt incurred by a QRF, a residential program or a public benefit corporation, in making purchases under subsections (1) to (3) of this rule.

(6) Each residential program and public benefit corporation that makes any purchase of equipment, materials, supplies or services through the State Procurement Office under ORS 279.855 must notify the State Procurement Office in writing whenever a contract that is necessary for the

organization to qualify under ORS 279.855 expires, is terminated, or is not renewed, and whenever the organization otherwise ceases to qualify under ORS 279.855 or this rule.

Stat. Auth.: ORS 279.845(1) & 184.340

Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855

Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05

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## Department of Administrative Services, Budget and Management Division Chapter 122

**Adm. Order No.:** BMD 1-2005(Temp)

**Filed with Sec. of State:** 6-17-2005

**Certified to be Effective:** 6-17-05 thru 7-31-05

**Notice Publication Date:**

**Rules Adopted:** 122-001-0026

**Subject:** This rule establishes expenditure limits allowing state agencies without a 2005-07 legislatively adopted budget to continue operating after June 30, 2005.

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

### 122-001-0026

#### Continuing Resolution for State Agency Expenditure Limitations

(1) A state agency, as defined in Senate Bill 5625 (Oregon Laws 2005), may incur obligations and authorize expenditures to continue operations into the 2005-2007 biennium at:

(a) The agency's 2003-2005 eighth quarter allotment level; or

(b) A higher or lower level as approved by the Budget and Management Division.

(c) In establishing an alternative expenditure level, the Budget and Management Division shall consider pending legislative budget direction.

(2) Each state agency without a legislatively adopted budget as of June 30, 2005, shall send a signed letter of verification to the Budget and Management Division on or before July 1, 2005, acknowledging:

(a) The agency does not have a legislatively adopted budget as of June 30, 2005;

(b) The continuing resolution ends July 31, 2005 or when an adopted budget is signed by the Governor;

(c) Expenditures will not be authorized above the level established pursuant to section (1) of this rule;

(d) Expenditures incurred under the continuing resolution will be part of the 2005-2007 adopted budget and not permanently charged against 2003-2005 expenditure limitation or appropriation; and

(e) The agency will not begin new programs or hire new staff positions until an adopted budget is signed by the Governor.

(3) Upon receipt of the signed verification letter, the Budget and Management Division shall establish an allotment level pursuant to section (1) of this rule. The Budget and Management Division shall notify each agency of the action taken.

Stat. Auth.: ORS 184.340

Stats. Implemented: OL 2005 (SB 5625)

Hist.: BMD 1-2005(Temp), f. & cert. ef. 6-17-05 thru 7-31-05

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## Department of Agriculture Chapter 603

**Adm. Order No.:** DOA 15-2005

**Filed with Sec. of State:** 6-16-2005

**Certified to be Effective:** 6-30-05

**Notice Publication Date:** 5-1-05

**Rules Adopted:** 603-001-0160, 603-001-0170

**Rules Amended:** 603-001-0125, 603-001-0130, 603-001-0135, 603-001-0140, 603-001-0145, 603-001-0150, 603-001-0155

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

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

### 603-001-0125

#### Purpose and Policy

In order to implement the provisions of ORS 183.330(1) requiring each agency to publish its methods for the public to obtain information, and in order to implement the provisions of ORS 192.430 so as to provide reasonable rules necessary for the protection of department records and to prevent interference with the regular discharge of the department's duties, the

# ADMINISTRATIVE RULES

department adopts the procedures set forth in OAR 603-001-0130 to 603-001-0165. Such procedures shall apply to requests for inspection or copying of public records of the department, and to requests for the department to prepare and supply certified or other types of copies of public records. Procedures for review of any departmental denial of public records inspections or public record copies are to be in accordance with the provisions of ORS 192.450 to 192.490. It is the policy of the department to attempt to balance those public interests that favor disclosure against those public interests that favor governmental confidentiality with a presumption in favor of disclosure.

Stat. Auth.: ORS 183, 192.005 & 561  
Stats. Implemented: ORS 183, 192.005 & 561  
Hist.: AD 1114(35-76), f. & ef. 12-20-76; DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

## 603-001-0130

### Procedures for Obtaining General Information

Except as otherwise provided in OAR 603-001-0125 to 603-001-0170, requests for information shall be directed to the department's Information Officer at the Agriculture Building, 635 Capitol Street, N.E., Salem, OR 97301.

Stat. Auth.: ORS 183 & 561  
Stats. Implemented: ORS 192.005  
Hist.: AD 1114(35-76), f. & ef. 12-20-76; DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

## 603-001-0135

### Procedures for Inspection or Copying of Public Records

(1) Requests for inspection or copying of public records shall be made either, via FAX, via e-mail, or in writing and shall be directed to the appropriate Division Administrator or Assistant Director of Agriculture responsible for the pertinent activity, as shown in the organizational description set forth in OAR 603-001-0155. All requests shall be made at or directed to the department's principal office located at 635 Capitol Street, N.E., Salem, OR 97301. Requests delivered in person shall be done between the hours of 8:30 a.m. to 11:30 a.m. and 1:00 p.m. to 4:30 p.m. Monday through Friday of each week except holidays. Receipt of a request shall be acknowledged in writing by the department, and the required fees, if any, for research and copies, and the time and place the requested records would be available for inspection or copying.

(2) Requests for inspection or copying of public records, which would result in any of the following, shall only be accepted if made in writing, and then shall be subject to the provisions of OAR 603-001-0140(2):

(a) If the department is required to search for or to collect the requested public records from department field facilities or from other offices separate from the department's principal office;

(b) If the department is required to search for, collect, examine, or sort voluminous and separate records or documents in order to comply with such request; or

(c) If the department is required to consult with another public body or agency having any interest in the propriety of such request.

(3) The provisions of OAR 603-001-0145 apply to this type of request.

Stat. Auth.: ORS 183 & 561  
Stats. Implemented: ORS 192.420  
Hist.: AD 1114(35-76), f. & ef. 12-20-76; DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

## 603-001-0140

### Procedures for Obtaining Copies of Public Records

(1) Requests for certified or other types of copies of public records shall be made, via FAX, via e-mail, or in writing and shall include a reasonably specific description of the particular record copy requested, i.e., the type of document, the subject matter, the approximate document date, and the name of the firm or person identified in the document (if pertinent).

(2) Subject to the provisions of OAR 603-001-0150, requested copies of public records shall be submitted to the requester within 20 days of the receipt of the request, unless any of the conditions set forth in OAR 603-001-0135(2) would result in a requirement for additional time. If such additional time is required, the department shall notify the requester of such fact within the 20-day period stated above.

(3) The provisions of OAR 603-001-0145 apply to this type of request.

Stat. Auth.: ORS 183 & 561  
Stats. Implemented: ORS 192.440, 192.450, 561.040 & 561.260  
Hist.: AD 1114(35-76), f. & ef. 12-20-76; DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

## 603-001-0145

### Fees for Public Record Disclosures

(1) As provided by ORS 192.440(2), the following fees are established for public record disclosures:

(a) Reimbursement of department staff time: an hourly rate of \$30.00 will be assessed for any staff time greater than 15 minutes spent locating records, reviewing records to delete exempt material, supervising the inspection of records, copying records, certifying records, and mailing records. The department may charge for the cost of searching for records regardless of whether the department was able to locate the requested record(s).

(b) Copies: Per page (all duplication processes) — \$.15;

(c) Certification: Per certificate — \$2.50;

(d) Electronic records searches are \$50.00 per hour;

(e) Express mailing is actual or minimum cost of \$9.00;

(f) Photo color reprints are \$0.50 per photo;

(g) Blue prints are at actual cost;

(h) Archive retrieval is actual cost with a minimum of \$10.00;

(i) Audio tapes (90 min) are \$5.00.

(2) If the request appears to require departmental services for which no fee has been established (computer time, travel, shipping cost, communication costs, etc.) the actual cost shall be determined or estimated by the department and, if \$25 or more, the requester shall be notified of such prior to the department complying with the request.

(3) A requester shall pay the applicable fees to the department prior to or at the time the department complies with the request. No refund of fees shall be made. If the department notifies a requester of determined or estimated fees in excess of \$25, as provided in section (2) of this rule, the requester shall, pay a deposit of such determined or estimated fee prior to the department complying with the request.

(4) All or a portion of fees may be waived as provided in OAR 603-001-160 and 165.

Stat. Auth.: ORS 183, 561, 192 & 603  
Stats. Implemented: ORS 192.440, 192.450, 561.040 & 561.260  
Hist.: AD 1114(35-76), f. & ef. 12-20-76; AD 9-1984, f. & ef. 7-6-84; DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

## 603-001-0150

### Noncompliance with Requests

(1) If a request received by the department has been erroneously submitted, in that the department has no public records relating to the request, the request shall be returned to the requester with any information concerning the appropriate agency to be contacted;

(2) If the department determines that all or any part of a public record should not be inspected or copied pursuant to a request, the department shall, within ten days of the receipt of such request, notify the requester of such fact, the public records or parts thereof that will not be disclosed, the reasons therefore, and the right of the requester to petition the Attorney General for review.

(3) In determining whether all or any part of a public record should not be inspected or copied pursuant to a request therefore, the department shall consider:

(a) Public record exemptions specified in ORS 192.500;

(b) Public record exemptions specified in applicable federal laws or regulations;

(c) Public record exemptions specified in other applicable Oregon law;

(d) Whether the requested public record is of a class of records that, by its very nature, either requires nondisclosure or disclosure considering confidentiality and feasibility factors; and

(e) Whether a partially exempt public record can be reasonably segregated so as to allow disclosure of an intelligible and undistorted portion of such record while preserving the confidentiality of the exempt portion of such record.

Stat. Auth.: ORS 183 & 561  
Stats. Implemented: ORS 192.440, 192.450, 561.040 & 561.260  
Hist.: AD 1114(35-76), f. & ef. 12-20-76; DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

## 603-001-0155

### Organizational Structure

In order to comply with the provisions of ORS 183.330(1) requiring each agency to publish a description of its organization, a chart of the department's organizational structure is set forth as **Appendix I**.

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

Stat. Auth.: ORS 183, 561, 192 & 603

Stats. Implemented: ORS 192.440, 192.450, 561.040 & 561.260

Hist.: AD 1114(35-76), f. & ef. 12-20-76; AD 9-1984, f. & ef. 7-6-84; DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

## 603-001-0160

### Fee Waivers and Reductions

(1) Ordinarily there will be no charge for one copy of a public record:

# ADMINISTRATIVE RULES

(a) When the material requested is currently being distributed or has been distributed as part of the public participation process such as a news release or public notice;

(b) When the requested material has been distributed through mass mailing and is readily available from the department at the time of request;

(c) When a records request is made by a local, state, or federal public/governmental entity or a representative of a public/governmental entity acting in a public function or capacity. Even if a person qualifies under this subsection, the department may still charge for record review and copying based on the following factors:

(A) Any financial hardship to the department;

(B) The extent of time, expense, and interference with the department's regular business;

(C) The volume of the records requested; or

(D) The necessity to segregate exempt from non-exempt materials.

(2) Public Interest Annual Fee Waivers:

(a) An approved annual fee waiver allows the requester to either review or obtain one copy of a requested record at no charge. Fee waivers are effective for a one-year period.

(b) A person, including members of the news media and non-profit organizations, may be entitled to an annual fee waiver provided that a Fee Waiver Form is completed and approved by the department. The form must identify the person's specific ability to disseminate information of any kind maintained by the department to the general public and that such information is generally in the interest of and in the benefit to the public within the meaning of the Public Records Law. Additional information may be requested by the department before granting any fee waiver.

(c) Even if a person has a fee waiver, the department may charge for record review and copying based on the following factors:

(A) Any financial hardship on the department;

(B) The extent of time, expense, and interference with the department's regular business;

(C) The volume of the records requested;

(D) The necessity to segregate exempt from non-exempt materials; and

(E) The extent to which the record request does not further the public interest or the particular needs of the requester.

(3) Case-by-case waivers or reductions: A person who does not request, or who is not approved for an annual waiver, may request a waiver or reduction of record review and reproduction costs on a case-by-case basis.

Stat. Auth.: ORS 192.410 – 505 & 468.020

Stats. Implemented: ORS 192.440

Hist.: DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

## 603-001-0170

### Public Interest Test

In determining whether sufficient public interest for a fee waiver is demonstrated, the department will consider:

(1) The requester's identity, public interest affiliation, and contact information;

(2) The purpose for which the requester intends to use the information;

(3) The character of the information;

(4) Whether the requested information is already in the public domain;

(5) Whether the requester can demonstrate the ability to disseminate the information to the public;

(6) The requester's inability to pay, but this fact alone is not a sufficient basis for a fee waiver;

(7) If the requester seeks technical information, a showing that the requester is able to understand that information and disseminate it to the public in a meaningful form;

(8) Any other additional information provided by the requester that would be helpful for the department in evaluating the request for a fee waiver or fee reduction. **Appendix 1**

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

Stat. Auth.: ORS 183, 561, 192 & 603

Stats. Implemented: ORS 192.440, 192.450, 561.040 & 561.260

Hist.: DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

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### Department of Agriculture, Oregon Tall Fescue Commission Chapter 607

Adm. Order No.: OTFC 1-2005

Filed with Sec. of State: 7-15-2005

**Certified to be Effective:** 8-1-05

**Notice Publication Date:** 5-1-05

**Rules Amended:** 607-010-0015, 607-010-0020

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

**Rules Coordinator:** David S. Nelson—(503) 585-1157

## 607-010-0015

### Definitions

(1) "Person" means any individual, corporation, partnership, or joint stock company.

(2) "Commission" means the Oregon Tall Fescue Commission.

(3) "Casual Sale" means any sale or sales of Tall Fescue Seed made by the producer direct to the consumer where the total accumulated sales during a calendar year is not more than 100 pounds.

(4) "First Purchaser" means any person who buys Tall Fescue Seed from the producer in the first instance, or handler who receives the Tall Fescue Seed in the first instance from the producer for resale or processing.

(5) "Producer" means a person or other legal entity producing Tall Fescue Seed in Oregon for market, whether as landowner, landlord, tenant, sharecropper, or otherwise.

(6) "Handler" means any producer, processor, or distributor, or other person engaged in handling or marketing of or dealing in Tall Fescue Seed, whether as owner, agent, employee, broker, or otherwise.

(7) Tall Fescue Seed (*Festuca arundinacea*) includes all varieties presently being produced in the state and any new varieties that may be released in the future with the exception of Alta and Goar.

Stat. Auth.:

Stats. Implemented:

Hist.: TF 3, f. & ef. 9-9-69; OTFC 1-2005, f. 7-15-05, cert. ef. 8-1-05

## 607-010-0020

### Assessments

(1) Any first purchaser shall deduct and withhold an assessment of three tenths of one percent (0.3%) of the purchase price per pound, clean seed basis, from the price paid to the producer thereof, on and after July 1, 1997, for Tall Fescue Seed grown in Oregon. As per OAR 607-010-0015(7), the varieties Alta and Goar are to be excluded from these assessment collections.

(2) All casual sales of Tall Fescue Seed shall be exempt from the assessment.

(3) The assessment shall be levied only against any commodity or mixture which contains more than 50 percent Tall Fescue Seed.

Stat. Auth.: ORS 576.325

Stats. Implemented: ORS 576

Hist.: TF 3, f. & ef. 9-9-69; TF 4, f. 6-20-72, ef. 7-1-72; TF 1-1989, f. 5-31-89, cert. ef. 7-1-89; TF 1-1990, f. & cert. ef. 9-5-90; TF 1-1992, f. & cert. ef. 7-13-92; TF 1-1994, f. & cert. ef. 11-8-94; TF 2-1994(Temp), f. 12-22-94, cert. ef. 1-1-95; TF 1-1997, f. 6-30-97, cert. ef. 7-1-97; OTFC 2-2001, f. 8-9-01, cert. ef. 8-15-01; OTFC 1-2005, f. 7-15-05, cert. ef. 8-1-05

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### Department of Community Colleges and Workforce Development Chapter 589

Adm. Order No.: DCCWD 1-2005

Filed with Sec. of State: 7-13-2005

**Certified to be Effective:** 7-13-05

**Notice Publication Date:** 5-1-05

**Rules Amended:** 589-002-0100

**Subject:** OAR 589-002-0100 governs the distribution of state funding to Oregon's community colleges. The revised distribution model funding formula is designed to achieve several objectives: 1. The State Board of Education's commitment to access and equity. 2. Maintain high levels of service to current students. 3. Long-term predictability and stability. The Oregon State Board of Education, the Department of Community Colleges and Workforce Development, and the seventeen Oregon community colleges have agreed to pursue funding equalization regardless of funding levels.

**Rules Coordinator:** Laura J. Roberts—(503) 378-8648, ext. 238

## 589-002-0100

### Distribution of Community College Support Fund

(1) Purpose Statement:



## ADMINISTRATIVE RULES

(a) It is in the state's interest to support a strong local community college system that meets local, regional and state economic and workforce development needs. Short- and long-term interests include the consideration of such things as comparable district funding capability, maintaining small districts as a means of educational access and stable, predictable funding. Oregon's community college distribution formula is designed to provide a financial foundation to support undergraduate and lower-division education, professional technical education, remedial education, local response to workforce training and other educational services necessary at the local and state level.

(b) The State Board of Education, through the authority vested in it by ORS 341.626, uses this rule to state clearly and concisely what the statewide interests are for Oregon community colleges and students through the adoption of a policy-driven distribution formula. The overarching policy levers, chosen by the State Board of Education, have been structured to support access and quality and to do so with equity for Oregon students.

(c) The Oregon State Board of Education, the Department of Community Colleges and Workforce Development, and the seventeen Oregon community colleges plan to pursue equalization of resources regardless of funding levels. This goal is reflected in the following principles:

(A) An expectation that equalization will be achieved in six years.

(B) Significant additional funds in a biennium compared to the previous biennium will benefit every college. The State Board of Education will determine what level is significant on a biennial basis.

(C) Historic share of total public resources will be based on the immediate previous year for every year, with the exception of 2005–06. For 2005–06, historic share of public resources will be based on the average of 2003–04 and 2004–05.

(D) Buffered FTE will be used in the formula. The buffering is accomplished by using a three-year weighted average as defined in Section (8)(b).

(E) If significant additional resources are available compared to the previous biennium, equalization can go faster. The State Board of Education will determine what level is significant on a biennial basis.

(F) The resource level available compared to the previous biennium may impact the pace of progress toward equalization.

(2) For purposes of this rule, the following definitions apply:

(a) "Total Public Resources." The Community College Support Fund formula considers 100% of the next year's imposed property tax revenue and the General Fund appropriation from the legislature.

(b) "Property tax revenues" is defined as the amount determined by the Department of Revenue to be imposed on local property following the application of limits imposed by sections 11(b)(1) through 11(b)(3), Article XI, of the Oregon Constitution, and those limits imposed by legislation implementing Ballot Measure 50. This amount becomes the basis for operation of the funding formula without regard to uncollectible taxes, or taxes collected from previous years. Taxes levied or imposed by a community college district to provide a public library system established prior to January 1, 1995 shall be excluded from the definition of property taxes in this rule. Property tax revenues raised through voter approval of any local option or capital construction levy are not to be included as a resource to be distributed through the funding formula.

(c) "Community College Support Fund" is defined as those funds received through the State's General Fund appropriation and distributed to the community colleges for the purpose of funding educational programs.

(d) "Full-Time Equivalent (FTE) Enrollment" is defined as 510 clock hours for all coursework and for all terms including a fall 12-week term. For an 11 week fall term, the following calculation will be used; 11/12 of 510 hours or 467.5 hours.

(e) "Total Reimbursable FTE" is defined as the sum of 40% of second year prior to current FTE, 30% of third year prior to current FTE, and 30% of fourth year prior to current FTE.

(f) "Historic Share of Public Resources" is defined as the percent of statewide non-base total public resources allocated to each Oregon community college in the prior period. With the exception of 2005–06, historic share of public resources is calculated by dividing each college's total public resources from the prior year, exclusive of the base, by total weighted reimbursable FTE from the prior year. For 2005–06, historic share of public resources is calculated by dividing each college's average total public resources from the 2003–04 and 2004–05 fiscal years, exclusive of the base, by the amount of frozen reimbursable FTE used in both the 2003–04 and 2004–05 fiscal years.

(g) "Equalization" is defined as equal public resource support per FTE, regardless of institution, and exclusive of the base. Equalization is measured by dividing Total Public Resources, exclusive of the base, by weighted reimbursable FTE.

(3) The Community College Support Fund shall be distributed in equal payments as follows:

(a) For the first year of the biennium, August 15, October 15, January 15, and April 15;

(b) For the second year of the biennium, August 15, October 15, and January 15;

(c) The final payment of each biennium is deferred until July 15 of the following biennium as directed by Senate Bill 1022 of the Third Special Session of the 71st Oregon Legislative Assembly.

(d) Should any of the dates set forth above occur on a weekend, payment shall be made on the next business day.

(e) All payments made before actual property taxes imposed by each district are certified by the Oregon Department of Revenue shall be based on the Department of Community Colleges and Workforce Development's best estimate of quarterly entitlement using enrollment and property tax revenue projections. Payments shall be recalculated each year as actual property tax revenues become available from the Oregon Department of Revenue and any adjustments will be made in the final payment(s) of the fiscal year.

(4) Districts shall be required to submit enrollment reports in the format specified by the Commissioner, including numbers of clock hours realized for all coursework, in a term-end enrollment report by the Friday of the sixth week following the close of each term. If reports are outstanding at the time of the quarterly payments, payment to the district(s) not reporting may be delayed at the discretion of the Commissioner.

(5) Reimbursement from the Community College Support Fund shall be made for professional technical, lower division collegiate, developmental education and other courses approved by the State Board in accordance with OAR 589-006-0100 through 589-006-0400. State reimbursement is not available for hobby and recreation courses as defined in OAR 589-006-0400.

(6) Residents of the state of Oregon and the states of Idaho, Washington, Nevada, and California shall be counted as part of each community college's reimbursable enrollment base but only for those students who take part in coursework offered within Oregon's boundaries.

(7) State funding for community college district operations is appropriated by the legislature on a biennial basis to the Community College Support Fund. For each biennium the amount of state funds available for distribution through the funding formula shall be calculated based on the following:

(a) Funds to support contracted out-of-district (COD) programs and corrections programs shall be subtracted from the amount allocated to the Community College Support Fund before the formula is calculated. The amount available for these programs shall be equal to the funding amount in the preceding biennium, except as adjusted to reflect the same percentage increase or decrease realized in the overall Community College Support Fund appropriation. Each college having a COD contract shall receive a biennial appropriation equal to the same percentage share of funding it received in the preceding biennium, except as adjusted to reflect the same percentage increase or decrease realized in the overall Community College Support Fund appropriation; funding for individual corrections programs will be determined in consultation with the Department of Corrections.

(b) The State Board of Education may establish a Strategic Fund.

(c) For 2005–07, \$1,187,565 shall be subtracted from the amount appropriated to the Community College Support Fund before the formula is calculated. These funds shall be used to support targeted investments including distributed learning activities.

(d) Funds remaining in the Community College Support Fund shall be divided equally between the two years of the biennium, and will be distributed in equal payments as described in Section 3 and through a distribution formula as described in Section 8.

(8) Distribution of funds to community college districts from the Community College Support Fund shall be accomplished through a formula, based on the following factors:

(a) Base Payment. Each community college district shall receive a base payment of \$600 for each FTE up to 1,100 and \$300 per FTE for unrealized enrollments between actual enrollment numbers and 1,100 FTE. The base payment may be adjusted by the State Board of Education each biennium. The base payment for each district will be adjusted according to the size of the district. District size for purposes of this adjustment will be

# ADMINISTRATIVE RULES

determined each year by the FTE set forth in section (8)(b) of this rule. The base payment adjustments shall be:

- (A) 0–750 FTE 1.3513;
- (B) 751–1,250 FTE 1.2784;
- (C) 1,251–1,750 FTE 1.2062;
- (D) 1,751–2,250 FTE 1.1347;
- (E) 2,251–2,750 FTE 1.0641;
- (F) 2,751–3,250 FTE 1.0108;
- (G) 3,251–3,750 FTE 1.0081;
- (H) 3,751–4,250 FTE 1.0054;
- (I) 4,251–4,999 FTE 1.0027;
- (J) 5,000 or more FTE 1.000.

(b) Student-Centered Funding: The formula is designed to progress toward a distribution of funds based on full-time equivalent (FTE) students. The equalized amount per FTE is determined by dividing total public resources — excluding base payments, contracted out-of-district payments, and any other payments directed by the State Board of Education or the Legislature — by total reimbursable FTE. The Department shall make the calculation based on submission of FTE reports by the districts and in accordance with established FTE principles.

(A) A three-year weighted average of reported reimbursable FTE by the colleges will be used.

(B) For 2005–06 through 2007–08: FTE will be “thawed” from its current level one year at a time, beginning in 2005–06 when actual 2003–04 FTE is included in the formula. Beginning in 2007–08, the weighted average of FTE will consider only actual FTE. The “frozen” 96,027 total reimbursable FTE statewide was set by the State Board of Education in 2002–03.

(i) The calculation for 2005–2006 reimbursable FTE is 2003–04 actual enrollments (weighted at 40%); 2002–03 enrollments set at 96,027 (weighted at 30%); 2001–02 enrollments set at 96,027 (weighted at 30%).

(ii) The calculation for 2006–07 reimbursable FTE is 2004–05 actual enrollments (weighted at 40%); 2003–04 actual enrollments (weighted at 30%); 2002–03 enrollments set at 96,027 (weighted at 30%).

(iii) The calculation for 2007–08 reimbursable FTE is 2005–06 actual enrollments (weighted at 40%); 2004–05 actual enrollments (weighted at 30%); 2003–04 actual enrollments (weighted at 30%).

(C) All future calculations will use a three-year weighted average with second year prior to current actual enrollment weighted at 40%, third year prior to current actual enrollment weighted at 30% and fourth year prior to current actual enrollment weighted at 30%.

(c) Equalization. The State Board of Education expects to achieve equalization in funding for all community college students in six years.

(A) Progress to equalization is defined as: On an individual institutional level, progress toward equalization will close the gap between non-base total public resource support per FTE and fully equalized non-base total public resource support per FTE by some fraction per year.

(B) The proposed model calculates how far each college’s non-base allocation is from full equity every year, then moves incrementally toward equalization each year. Each college makes the same percentage movement to equalization each year unless the harm limit (described in Section (8)(d)) is invoked. Colleges at or near equity do not move much in real dollars under the equity adjustment. Colleges further from equity move more in real dollars under the equity adjustment.

(C) In early years, the focus is on stability as colleges adjust to equalization. A smaller proportion of funds is distributed through equalization and a larger proportion is distributed based on historic share of public resources. As the timeframe progresses, this proportion reverses, and in later years more funds are distributed through equalization.

(d) Harm Limit. The harm limit is designed to prevent individual colleges from losing more than a certain percent of non-base total public resources from one year to the next due to equalization. The harm limit does not limit losses in total public resources due to changes in FTE enrollment, changes in the General Fund appropriation, or changes in public resources. The harm limit is determined by combining the percent change in state appropriation funds from one year to the next with an adjustment percent determined by the State Board of Education each year. In determining the adjustment, and therefore the total harm limit that results from combining the adjustment with the percent change in resources, the Board should consider the following issues:

(A) The total harm limit must not unnecessarily impede progress toward equalization in the expected six-year period.

(B) The total harm limit should be adequate to ameliorate unreasonable negative effects of equalization.

(e) Distribution of Significant Additional State Resources. In a biennium when significant additional state resources are available compared to the state appropriation in the previous biennium, in each year of the biennium:

(A) Fifty percent of additional state resources will be allocated through the equalization methodology.

(B) The remaining fifty percent of additional state resources will be allocated based on the college’s historic share of public resources.

(C) The State Board of Education will determine on a biennial basis what level of additional resources is considered significant.

(D) The State Board of Education retains the authority to alter the percent of significant additional state resources allocated according to equity and historic share of public resources for each biennium, beginning in 2007–09.

(9) State general fund and local property taxes for territories annexed or formed effective June 1, 1996, or later shall not be included in the funding formula for the first three years of service. Additionally, the FTE generated in newly annexed territories shall not impact the funding formula during the first three years of service. Beginning in the fourth year, funding will be distributed through the formula as outlined in this rule.

Stat. Auth.: ORS 326.051 & 341.626

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

Hist.: 1EB 9-1979, f. & ef. 6-11-79; EB 12-1991, f. & cert. ef. 7-19-91; Renumbered from 581-043-0260; ODE 27-2000, f. & cert. ef. 10-30-00; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-041-0200; DCCWD 2-2001, f. & cert. ef. 5-7-01; DCCWD 3-2002, f. & cert. ef. 6-5-02; DCCWD 7-2002(Temp), f. & cert. ef. 12-16-02 thru 6-5-03; DCCWD 3-2003, f. & cert. ef. 5-14-03; DCCWD 1-2004, f. & cert. ef. 7-1-04; DCCWD 1-2005, f. & cert. ef. 7-13-05

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

**Adm. Order No.:** BCD 13-2005

**Filed with Sec. of State:** 6-20-2005

**Certified to be Effective:** 7-1-05

**Notice Publication Date:** 5-1-05

**Rules Adopted:** 918-261-0031

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

**Rules Coordinator:** Heather L. Gravelle—(503) 373-7438

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**918-261-0031**

**Exemptions from Permits and Licensing**

Industrial electrical equipment designed for and used directly in the production of a product; which due to the equipment design or use requires specialized and specific training in the process, function, design, modification, repair, or maintenance of the equipment is exempt from permits specifically for repair, modification or maintenance. Individuals performing work under this rule are also exempt from licensing.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 13-2005, f. 6-20-05, cert. ef. 7-1-05

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**Adm. Order No.:** BCD 14-2005

**Filed with Sec. of State:** 7-5-2005

**Certified to be Effective:** 7-5-05

**Notice Publication Date:** 6-1-05

**Rules Amended:** 918-460-0015

**Subject:** This rulemaking amends Chapter 11 of the 2004 Oregon Structural Code (OSCC) to adjust building code provisions that are in conflict with federal standards.

**Rules Coordinator:** Nicole M. Jantz—(503) 373-7438

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**918-460-0015**

**Amendments to the Structural Specialty Code**

(1) The **Structural Specialty Code** is generally readopted every three years coinciding with the national adoption of a nationally recognized Building Code and other referenced supporting nationally recognized codes pursuant to chapter 918, division 8.

(2) Effective October 1, 2004, delete Section 2406.1.2 Wired glass.

(3) Effective April 7, 2005 to September 30, 2005 users of the code may choose between either Chapter 29 of the **2004 Oregon Structural**

# ADMINISTRATIVE RULES

**Specialty Code or Chapter 29 of the 1998 Oregon Structural Specialty Code** as further amended by the division to include M and E Occupancies in Section 2904.2 Requirements.

(4) Effective July 1, 2005, the following sections of the 2004 OSSC are amended to adjust building code provisions which are in conflict with federal standards.

(a) Amend Section 1109.16 bringing code into compliance with the Americans with Disabilities Act.

(b) Amend Section 1110.5.2 bringing code into compliance with the Fair Housing Act.

(c) Amend Section 1110.6.4.1.2 bringing code into compliance with the Fair Housing Act.

(d) Add new Section 1313.4.2.1.1 to adjust lighting power density for retail occupancies.

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

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

Stats. Implemented: ORS 447.247, 455.110 & 455.112

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCD 6-1994, f. 2-25-94, cert. ef. 5-1-94; BCD 22-1994, f. 9-28-94, cert. ef. 1-1-95; BCD 31-1994(Temp), f. & cert. ef. 12-23-94; BCD 32-1994, f. & cert. ef. 12-30-94; BCD 2-1995, f. & cert. ef. 2-9-95; BCD 5-1995, f. & cert. ef. 3-15-95; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 6-1996, f. 3-29-96, cert. ef. 4-1-96; BCD 12-1997, f. 9-10-97, cert. ef. 10-1-97; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 24-1998(Temp), f. & cert. ef. 12-1-98 thru 5-29-99; Temporary Rule repealed by BCD 3-1999, f. 3-12-99, cert. ef. 4-1-99; BCD 5-1999, f. 6-17-99, cert. ef. 10-1-99; BCD 12-1999(Temp), f. 9-23-99, cert. ef. 11-1-99 thru 4-28-00; BCD 2-2000 f. 1-14-00, cert. ef. 4-1-00; BCD 20-2000, f. 9-15-00, cert. ef. 10-1-00; BCD 8-2001, f. 7-17-01, cert. ef. 10-1-01; BCD 18-2001, f. 12-21-01, cert. ef. 1-1-02; BCD 14-2003, f. 8-13-03, cert. ef. 10-1-03; BCD 18-2003(Temp) f. & cert. ef. 11-14-03 thru 5-11-04; BCD 5-2004, f. & cert. ef. 4-1-04; BCD 16-2004, f. 9-24-04, cert. ef. 10-1-04; BCD 21-2004, f. & cert. ef. 10-1-04; BCD 9-2005(Temp), f. & cert. ef. 4-7-05 thru 9-30-05; BCD 14-2005, f. & cert. ef. 7-5-05

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**Adm. Order No.:** BCD 15-2005

**Filed with Sec. of State:** 7-5-2005

**Certified to be Effective:** 7-5-05

**Notice Publication Date:** 6-1-05

**Rules Amended:** 918-500-0100

**Subject:** This rulemaking eliminates the Manufactured Dwelling Industry Training Hitch fee for a training service no longer provided by the division. Rulemaking also updates obsolete specialty code references.

**Rules Coordinator:** Nicole M. Jantz—(503) 373-7438

**918-500-0100**

**General Manufacturer, Dealer and License Fees**

The following fees shall be paid to the Division where the Division is the authority having jurisdiction. Municipalities who have been delegated the manufactured dwelling alteration program by the Division may establish their own fee schedule, within the restriction of OAR 918-500-0055(2), or adopt the Division's fee schedule through local ordinance.

(1) Inspection Fee: \$55 for an inspection requiring one hour or less, and \$27.50 for every additional 30 minutes or fraction thereof exceeding one hour, including travel time. Mileage shall be paid at the rate established by the State's Department of Administrative Services.

(2) Field Technical Service Fee: \$55 for service requiring one hour or less, and \$27.50 for every additional 30 minutes or fraction thereof exceeding one hour, including travel time. Mileage shall be paid at the rate established by the State's Department of Administrative Services.

(3) Out-of-State Inspection or Field Technical Service Fee: In addition to the hourly charges of sections (1) and (2) of this rule, the Division shall be reimbursed for the actual cost based on published air fare and/or equivalent, plus required surface transportation and cost for food and lodging consistent with the allowances established by the State of Oregon's Department of Administrative Services for authorized state employee travel.

(4) Hourly Re-inspection Fee: Same fee schedule as noted in sections (1), (2), and (3) of this rule.

(5) Change of Manufacturer's Name, Ownership or Address Fee: \$20 for each change.

(6) Insignia Fee: \$50 per insignia.

(7) Replacement Insignia: \$50 per insignia.

(8) Alteration Permit Fees:

(a) Alteration Inspection Fee: \$125 per inspection including insignia of compliance;

(b) Alternate Construction Inspection Fee: \$55 per hour including travel time but not to exceed \$300 for any one manufactured home; or

(c) Single Visual Inspection Fee: \$125 per inspection.

(9) Installation Certification Tag: \$8 per tag.

(10) Manufacturer Registration Fee: \$100 per facility.

(11) Manufacturer Annual Registration Renewal Fee: \$20 per facility.

(12) Manufactured Dwelling Inplant Inspection Fee: \$42.50 per floor inspected, and shall be paid monthly. A maximum of four floor overlap inspections may be performed without charge during each regularly scheduled complete inplant inspection. The fee for re-inspections and additional overlap inspections may be charged at the rate for each floor or at the rate per hour, whichever is less.

(13) Installer License Program Hitch Fee: \$4 per floor produced in Oregon, and shall be paid monthly.

(14) Manufactured Dwelling Label or Tag Handling Fee: \$2 per floor.

(15) Plan Review Fee: \$55 for non-structural plan review requiring one hour or less, and \$27.50 for every additional 30 minutes or fraction thereof exceeding one hour.

(16) Structural Plan Review Fee: \$70 for plan review requiring one hour or less; \$35 for every 30 minutes or fraction thereof exceeding one hour.

(17) Manufactured Dwelling Installer License and Examination Fee: \$55.

(18) Education Provider Application Fee: \$55.

(19) Manufactured Dwelling Limited Installer and Limited Skirting Installer License Fee: \$55.

(20) Manufactured Dwelling Installer and Educational Provider Re-examination Fee: \$40.

(21) Manufactured Dwelling Temporary Limited Installer License Fee: \$10.

(22) Installer, Limited Installer and Limited Skirting Installer License Two Year Renewal Fee: \$80.

(23) Manufactured Dwelling Accessory Building or Structure Installation Permit Fees: The fees shall be those published in the **Oregon Residential Specialty Code**.

(24) Wherever the fees in this rule differ from the fees in the **Oregon Manufactured Dwelling and Park Specialty Code**, this rule shall apply.

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

Stat. Auth.: ORS 446.176

Stats. Implemented: ORS 446.176

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 9-1991(Temp), f. 4-24-91, cert. ef. 7-1-91; BCA 34-1991, f. 10-23-91, cert. ef. 10-31-91; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCA 1-1993, f. & cert. ef. 1-4-93; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 23-1994, f. 10-26-94, cert. ef. 11-18-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 13-1996, f. & cert. ef. 7-1-96; BCD 11-1998(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 15-2000(Temp), f. 8-2-00, cert. ef. 10-1-00 thru 3-29-01; BCD 1-2001, f. 1-24-01, cert. ef. 2-1-01; BCD 15-2005, f. & cert. ef. 7-5-05

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**Adm. Order No.:** BCD 16-2005(Temp)

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

**Certified to be Effective:** 7-7-05 thru 12-31-05

**Notice Publication Date:**

**Rules Adopted:** 918-008-0075, 918-008-0080, 918-008-0085, 918-008-0090, 918-008-0095, 918-008-0105, 918-008-0110, 918-008-0115, 918-008-0120, 918-008-0120, 918-008-1000, 918-008-1010, 918-008-1025, 918-008-1040, 918-008-1042, 918-008-1450, 918-008-1470, 918-008-1480, 918-008-1900

**Rules Amended:** 918-020-0090, 918-090-0000, 918-090-0010, 918-090-0200, 918-090-0210, 918-090-0200, 918-281-0000, 918-281-0010, 918-281-0020, 918-281-0070, 918-695-0400, 918-695-0410

**Rules Suspended:** 918-098-0000, 918-098-0030, 918-098-0040, 918-098-0050, 918-098-0405, 918-098-0422, 918-098-0423, 918-098-0440, 918-098-0450, 918-098-0460, 918-251-0030, 918-251-0040, 918-281-0030, 918-281-0040, 918-281-0050, 918-281-0060, 918-308-0110, 918-400-0230, 918-690-0340, 918-690-0350

**Rules Ren. & Amended:** 918-098-0010 to 918-098-1005, 918-098-0020 to 918-098-1045, 918-098-0060 to 918-098-1015, 918-098-0065 to 918-098-1030, 918-098-0070 to 918-098-1050, 918-098-0080 to 918-098-1055, 918-098-0090 to 918-098-1060, 918-098-0100 to 918-098-1065, 918-098-0110 to 918-098-1070, 918-098-0120 to 918-098-1075, 918-098-0130 to 918-098-1085, 918-098-0200 to 918-098-1200, 918-098-0210 to 918-098-1205, 918-098-0220 to 918-098-1210, 918-098-0230 to 918-098-1215, 918-098-0240 to 918-098-1220, 918-098-0300 to 918-098-1300, 918-098-0310 to 918-098-1305, 918-098-0320 to 918-098-1310, 918-098-0330 to 918-098-1315, 918-098-0340 to 918-098-1320, 918-098-0350 to 918-098-1325, 918-098-0360 to 918-098-1330, 918-098-0400 to 918-098-1400, 918-098-0410 to 918-098-1410,



# ADMINISTRATIVE RULES

918-098-0420 to 918-098-1420, 918-098-0425 to 918-098-1430, 918-098-0430 to 918-098-1440, 918-098-0470 to 918-098-1460, 918-098-0500 to 918-098-1500, 918-098-0600 to 918-098-1600, 918-098-0610 to 918-098-1610, 918-098-0620 to 918-098-1620, 918-098-0630 to 918-098-1630, 918-098-0900 to 918-098-1080

**Subject:** The purpose of this rulemaking is to modify the existing and implement a new certification and licensing system based on national certifications for building officials, certain inspectors, and plan examiners, and third party inspector or plan reviewer licenses; as well as to establish rules for consistent code interpretations and appeals that form the basis of the certification and licensing responsibilities and curriculum.

**Rules Coordinator:** Nicole M. Jantz—(503) 373-7438

## 918-008-0075

### Scope and Purpose

(1) OAR 918-008-0075 to 918-008-0115 applies to the state building code adopted by the division as defined in ORS 455.010. The purpose of these rules is to create a standard process for statewide code interpretations, site-specific interpretations, and alternate method rulings for all specialty code program areas except the boiler program.

(2) Statewide code interpretations and site-specific interpretations clarify existing provisions of the state building code and are not intended to create new provisions.

(3) Alternate method rulings on products not covered in the current state building code apply only to new products, materials or methods and do not create new sections of code.

Stat. Auth.: ORS 455.060, 455.100, 455.110 & 455.144  
Stats. Implemented: ORS 455.060, 455.100 & 455.110  
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-008-0080

### Definitions

(1) "Alternate Method Ruling" is a request to rule on the acceptability of new materials, designs or innovative methods of construction not covered by the state building code.

(2) "Petitioner" means:

(a) Any person residing, currently doing business, wishing to do business, or owning property in the State of Oregon; or

(b) A building official authorized to administer and enforce the state building code under 455.148 or 455.150.

(3) "Site-Specific Interpretation" means a division-issued interpretation of a specialty code provision for use by a municipality that applies only to a single project. Site-specific code interpretations assist a local jurisdiction by providing an explanation of the meaning or intent of specific code provisions or sections as they apply to work permitted by the local jurisdiction. Nothing in this section replaces local processes for site-specific interpretations.

(4) "Statewide Code Interpretation" means a division-issued binding interpretation of a specialty code provision that applies in all jurisdictions. Statewide code interpretations provide an explanation of the meaning or intent of specific code provision or section.

Stat. Auth.: ORS 455.060, 455.100, 455.110 & 455.144  
Stats. Implemented: ORS 455.060, 455.100 & 455.110  
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-008-0085

### Statewide Code Interpretation Process

(1) A petitioner may request a statewide code interpretation by providing the following information in writing or on division approved forms:

(a) A brief description of the facts and circumstances giving rise to the need for a statewide code interpretation; and

(b) The specialty code section at issue.

(2) Notwithstanding subsections (a) and (b) of this rule, the division may elect to accept a substantially complete request for a statewide code interpretation if circumstances merit.

(3) After receipt and approval of a petitioner's request for interpretation, the division will process the request, reach a conclusion, and distribute the decision.

(4) Every quarter, the division will communicate its actions occurring in the previous quarter concerning statewide code interpretations to the appropriate advisory board.

Stat. Auth.: ORS 455.060, 455.100, 455.110 & 455.144  
Stats. Implemented: ORS 455.060, 455.100 & 455.110  
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-008-0090

### Site-Specific Interpretation Process

(1) A building official may request a site-specific interpretation by providing the following information in writing or on division approved forms:

(a) A brief description of the facts and circumstances giving rise to the need for a site-specific interpretation;

(b) The specialty code section at issue;

(c) The physical address of the building site.

(2) Notwithstanding subsection (a) through (c) of this rule, the division may elect to accept a substantially complete request for a site-specific interpretation if circumstances merit.

(3) After receipt and approval of a building official's request for interpretation, the division will process the request, reach a conclusion, and distribute the decision.

Stat. Auth.: ORS 455.100, 455.110 & 455.144  
Stats. Implemented: ORS 455.100 & 455.110  
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-008-0095

### Alternate Method Ruling Process

(1) A petitioner may request an alternate method ruling by providing the following information in writing or on division approved forms:

(a) Information on the material, design or method the person wishes to utilize;

(b) The specialty code section at issue;

(c) A brief description of the scientific and technical facts and circumstances giving rise to the need for an alternate method ruling.

(2) Notwithstanding subsections (a) through (c) of this rule, the division may elect to accept a substantially complete request for an alternate method ruling if circumstances merit.

(3) After receipt of a petitioner's complete request for interpretation the appropriate advisory board makes a recommendation on the scientific and technical merits of the proposed alternate method ruling, consistent with ORS 455.060.

(4) After considering the recommendation of the appropriate advisory board, the division makes the final decision on the alternate method ruling and distributes the decision consistent with ORS 455.060.

Stat. Auth.: 455.060 & 455.144  
Stats. Implemented: 455.060  
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-008-0105

### Review of Statewide Interpretations and Alternate Method Rulings

(1) Statewide code interpretations or alternate method rulings issued under 918-008-0085 or 918-008-0095 remain in effect until the adoption of a new specialty code on which the interpretation is based or ruling applies.

(2) During the adoption of a new specialty code under 918-008-0030, the division must review all interpretations and alternate method rulings issued during the previous code cycle and may elect to incorporate them into the new specialty code as amendments, reissue them, or archive them for informational purposes.

Stat. Auth.: ORS 455.060, 455.100, 455.110 & 455.144  
Stats. Implemented: ORS 455.060, 455.100 & 455.110  
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-008-0110

### Enforcement

All jurisdictions administering and enforcing the state building code must enforce statewide code interpretations and allow the use of alternate method rulings consistent with the original scope of the ruling. Failure to enforce statewide code interpretations or allow statewide alternate method rulings may subject building officials, plans examiners and inspectors to revocation or suspension of certifications.

Stat. Auth.: ORS 455.144, 455.148, 455.150 & 455.740  
Stats. Implemented: ORS 455.148, 455.150 & 455.740  
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-008-0115

### Reconsideration of Division Determination

In accordance with OAR 137-003-0090, 137-004-0080 and ORS 183.484(2):

(1) A petitioner whose request for a site-specific interpretation or a statewide code interpretation was denied may request reconsideration of the agency decision.

(2) Any person, including a member of an advisory board as defined under 455.010, adversely affected or aggrieved by an interpretation may request the division reconsider its determination.

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(3) Interpretations or rulings remain in effect despite a reconsideration request unless a petitioner specifically requests and is granted a stay of enforcement of the interpretation.

Stat. Auth.: ORS 455.100, 455.110 & 455.144

Stats. Implemented: ORS 455.100, 455.110

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-008-0120

### State Building Code Appeal Process

(1) A person aggrieved by the building official's decision on the application of the state building code adopted under ORS 447.020, 455.020, 455.610, 460.085, 460.360, 479.730 or 480.545 may appeal to either the local jurisdiction's appeals board or the state specialty code chief. The appeals process selected may not change once initiated.

(2) A filing fee of \$20 is required for appeals to the state specialty code chief.

(3) An appeal must be filed within 30 calendar days of the building official's decision.

(4) An appeal must include the following information and other information requested by the chief:

(a) The person filing the appeal, the jurisdiction where the act occurred, and any parties involved, including contact information;

(b) The specific code or codes involved, with proper citation;

(c) A written description of appeal, which may include diagrams or drawings with distances shown to scale;

(d) A copy of any written interpretation or decision, if issued by the jurisdiction;

(e) An explanation why the ruling should be reversed;

(f) The status and date of stop work order if issued; and

(g) Other information as requested by the chief.

(h) Notwithstanding subsection (a) through (g) of this rule, the division may elect to accept a substantially complete request for an appeal when it appears that doing so furthers the interests of the state.

(5) The building official and person appealing must respond within 7 calendar days to a request from the chief for additional information. The chief has 14 days to render a decision and inform both the jurisdiction and the person appealing a decision of a local jurisdiction. The maximum time for rendering a decision may not exceed 30 calendar days. The Building Codes Division Administrator may suspend these procedural time frames when the complexity of the issue merits additional decision time.

(6) A decision by a local jurisdiction's appeals board or chief may be appealed to the appropriate advisory board within 30 calendar days of the decision. A filing fee of \$20 is charged for an appeal of a local jurisdiction's appeals board decision.

Stat. Auth.: ORS 455.030, 455.144, 460.085 & 480.545

Stats. Implemented: ORS 455.475 & 479.853

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-020-0090

### Program Standards

The division and every municipality that administers and enforces a building inspection program shall establish and maintain the minimum standards, policies and procedures set forth in this section.

(1) Administrative Standards. A building inspection program shall:

(a) Provide adequate funds, equipment and other resources necessary to administer and enforce the building inspection program in conformance with an approved operating plan;

(b) Document in writing the authority and responsibilities of the building official, plan reviewers and inspectors based on an ordinance or resolution that authorizes the building official on behalf of the municipality to administer and enforce a building inspection program;

(c) Establish a local process to review appeals of technical and scientific determinations made by the building official regarding any provision of the specialty codes the municipality administers and enforces, to include a method to identify the local building official or designee and notify the aggrieved persons of the provisions of ORS 455.475;

(d) Account for all revenues collected and expenditures made relating to administration and enforcement of the building inspection program, and account for the electrical program revenues and expenditures separately when administered by the municipality.

(A) Prepare income and expense projections for each code program it will administer and enforce during the reporting period; and

(B) Describe how general administrative overhead costs and losses or surpluses, if any, will be allocated.

(e) Establish policies and procedures for the retention and retrieval of records relating to the administration and enforcement of the specialty codes it administers and enforces;

(f) Make its operating plan available to the public;

(g) Establish a process to receive public inquiries, comments and complaints;

(h) Adopt a process to receive and respond to customers' questions regarding permitting, plan review and inspections;

(i) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will receive and respond to customers' questions;

(j) Post its jurisdictional boundary, types of permits sold and hours of operation at each permit office it operates; and

(k) Identify all persons in addition to the building official to whom notices issued pursuant to these rules should be sent.

(2) Permitting Standards. A building inspection program shall:

(a) Provide at least one office within its jurisdictional boundary where permits may be purchased;

(b) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will make permits available for purchase;

(c) Establish policies and procedures for receiving permit applications, determining whether permit applications are complete and notifying applicants what information, if any, is required to complete an application;

(d) Set reasonable time periods within which the municipality will:

(A) Advise permit applicants whether an application is complete or requires additional information; and

(B) Generally issue a permit after an application has been submitted and approved.

(e) Establish policies and procedure for issuing permits not requiring plan review, emergency permits, temporary permits, master permits and minor labels;

(f) Provide a means to receive permit applications via facsimile; and

(g) Require proof of licensing, registration and certification of any person who proposes to engage in any activity regulated by ORS Chapters 446, 447, 455, 479, 693 and 701 prior to issuing any permit.

(3) Plan Review Standards. A building inspection program shall:

(a) Establish policies and procedures for its plan review process to:

(A) Assure compliance with the specialty codes it is responsible for administering and enforcing, including any current interpretive rulings adopted pursuant to ORS 455.060 or 455.475;

(B) Make available checklists or other materials at each permitting office it operates that reasonably appraises persons of the information required to constitute a complete permit application or set of plans;

(C) Inform applicants within three working days of receiving an application, whether or not the application is complete and if it is for a simple residential plan. For the purposes of this rule and ORS 455.467, a "complete application" shall be defined by the division taking into consideration the Tri-County procedures in OAR chapter 918, division 50. If deemed a simple residential plan, the jurisdiction shall also inform the applicant of the time period in which the plan review will generally be completed;

(D) Establish a process that includes phased permitting and deferred submittals for plan review of commercial projects for all assumed specialty codes, taking into consideration the Tri-County procedures in OAR chapter 918, division 50. The process shall not allow a project to proceed beyond the level of approval authorized by the building official. The process shall:

(i) Require the building official to issue permits in accordance with the state building code as defined in ORS 455.010 provided that adequate information and detailed statements have been submitted and approved with pertinent requirements of the appropriate code. Permits may include, but not be limited to: excavation, shoring, grading and site utilities, construction of foundations, structural frame, shell or any other part of a building or structure.

(ii) Allow deferred submittals to be permitted within each phase with the approval of the building official; and

(iii) Require the applicant to be notified of the estimated timelines for phased plan reviews and that the applicant is proceeding without assurance that a permit for the entire structure will be granted when a phased permit is issued.

(E) Verify that all plans have been stamped by a registered design certified professional and licensed plan reviewer where required;

(F) Verify for those architects and engineers requesting the use of alternative one and two family dwelling plan review program that all plans have been stamped by a registered certified professional who is also a residential one and two family dwelling plans examiner certified by the division or possess an Oregon Inspector Certification and current International

# ADMINISTRATIVE RULES

Code Council certification as a Residential Building Inspector. This process shall require the building official to:

(i) Establish policies and procedures in their operating plan for this process;

(ii) Waive building inspection program plan review requirements for conventional light frame construction for detached one and two family dwellings; and

(iii) Establish an appropriate fee for processing plans submitted under this rule.

(b) Employ or contract with a person licensed, registered or certified to provide consultation and advice on plan reviews as deemed necessary by the building official based on the complexity and scope of its customers' needs;

(c) Maintain a list of all persons it employs or contracts with to provide plan review services including licenses, registrations and certifications held by each plan reviewer and evidence of compliance with all applicable statutory or certified professional continuing education requirements;

(d) Designate at least three licensed plan reviewers from whom the municipality will accept plan reviews when the time periods in subsection (e) of this section cannot be met; and

(e) Allow an applicant to use a plan reviewer licensed under OAR 918-090-0210 and approved by the building official when the time period for review of "simple one- or two-family dwelling plans" exceeds 10 days where the population served is less than 300,000, or 15 days where the population served is 300,000 or greater.

(4) For the purposes of these rules, "simple one- or two-family dwelling plans" shall:

(a) Comply with the requirements for prescriptive construction under the One-and Two-Family Dwelling Specialty Code; or

(b) Comply with the Oregon Manufactured Dwelling and Park Specialty Code; and

(c) Be a structure of three stories or less with an enclosed total floor space of 4,500 square feet or less, inclusive of multiple stories and garage(s).

(5) "Simple one- or two-family dwelling plans" may:

(a) Include pre-engineered systems listed and approved by nationally accredited agencies in accordance with the appropriate specialty code, or by state interpretive rulings approved by the appropriate specialty board, that require no additional analysis; and

(b) Be designed by an architect or engineer and be considered a simple one- and two-family dwelling if all other criteria in this rule are met.

(6) The following shall be considered "simple one- or two-family dwelling plans":

(a) Master plans approved by the authority having jurisdiction or under ORS 455.685, which require no additional analysis; and

(b) Plans that include an engineering soil report if the report allows prescriptive building construction and requires no special systems or additional analysis.

(7) A plan that does not meet the definition of "simple" in this rule shall be deemed "complex". In order to provide timely customer service, a building official may accept a plan review performed by a licensed plan reviewer for a complex one- or two-family dwelling.

(8) Inspection Standards. A building inspection program shall:

(a) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will provide inspection services or alternative inspection schedules agreed to by the municipality and permittee;

(b) Unless otherwise specified by statute or specialty code, establish reasonable time periods when inspection services will be provided following requests for inspections;

(c) Establish policies and procedures for inspection services;

(d) Leave a written copy of the inspection report on site;

(e) Make available any inspection checklists;

(f) Maintain a list of all persons it employs or contracts with to provide inspection services including licenses, registrations and certifications held by persons performing inspection services and evidence of compliance with all applicable statutory or certified professional continuing education requirements;

(g) Vest the building official with authority to issue stop work orders for failure to comply with the specialty codes the municipality is responsible for administering and enforcing; and

(h) Require inspectors to perform license enforcement inspections as part of routine installation inspections.

(i) Where a municipality investigates and enforces violations under ORS 455.156 or in accordance with the municipality's local compliance

program, the municipality's inspectors shall require proof of compliance with the licensing, permitting, registration and certification requirements of persons engaged in any activity regulated by ORS Chapters 446, 447, 455, 479, 693 and 701. Inspectors shall report any violation of a licensing, permitting, registration or certification requirement to the appropriate enforcement agency.

(9) Compliance Programs. A municipality administering a building inspection program may enact local regulations to create its own enforcement program with local procedures and penalties; utilize the division's compliance program by submitting compliance reports to the division; elect to act as an agent of a division board pursuant to ORS 455.156; or develop a program that may include, but not be limited to, a combination thereof. A building inspection program shall establish in its operating plan:

(a) Procedures to respond to public complaints regarding work performed without a license or permit or in violation of the specialty codes the municipality is responsible for administering and enforcing;

(b) Procedures requiring proof of licensure for work being performed under the state building code utilizing the approved citation process and procedures in OAR 918-020-0091.

(c) Policies and procedures to implement their compliance program;

(d) Policies and procedures regarding investigation of complaints, where the municipality chooses to investigate and enforce violations pursuant to ORS 455.156; and

(e) Policies and procedures regarding issuance of notices of proposed assessments of civil penalties, where the municipality chooses to act as an agent of a board pursuant to ORS 455.156. Penalties under such a program are subject to the limitations set in ORS 455.156 and 455.895.

(10) Electrical Programs. Municipalities that administer and enforce an electrical program shall demonstrate compliance with all applicable electrical rules adopted pursuant to ORS 479.855.

[Publications referenced are available for review from the division.]

Stat. Auth.: ORS 455.030, 455.467, 455.469 & 455.156

Stats. Implemented: ORS 455.150, 455.467, 455.469 & 455.156

Hist.: BCD 9-1996, f. 7-1-96, cert. ef. 10-1-96; BCD 14-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 11-2000, f. 6-23-00, cert. ef. 7-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 16-2002, f. & cert. ef. 7-1-02; BCD 27-2002, f. & cert. ef. 10-1-02; BCD 6-2004, f. 5-21-04, cert. ef. 7-1-04; BCD 11-2004, f. 8-13-04, cert. ef. 10-1-04; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-090-0000

### Purpose and Scope

(1) These rules establish registration requirements for businesses that perform specialty code inspections or plan reviews, and establish license requirements for individuals who perform specialty code inspections or plan reviews who are not employed by the division or a municipality.

(2) Nothing in these rules is meant to change existing requirements for individual certification to perform plan reviews and inspections under OAR chapter 918, division 098, 281, 695, or 780.

(3) For the purpose of these rules "plan reviewer" and "plans examiner" have the same meaning.

(4) Persons approved and certified by the division who perform amusement ride or boiler inspections under the authority of ORS Chapters 460 and 480 and rules adopted thereunder are not required by OAR chapter 918, division 090 rules to be licensed or registered.

Stat. Auth: ORS 455.457

Stats. Implemented: ORS 455.455 & 455.457

Hist.: BCD 16-2000, f. 8-4-00, cert. ef. 10-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 29-2002, f. & cert. ef. 10-1-02; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-090-0010

### Definitions

As used in OAR chapter 918, division 090, unless the context requires otherwise:

(1) "Employed" means working directly for an employer as an employee and completing a withholding exemptions certificate required by ORS 316.162 to 316.212.

(2) "Employee" means an individual who has completed a withholding exemptions certificate required by ORS 316.162 to 316.212.

(3) "Designated Licensed Plan Reviewer" means a licensed plan reviewer authorized by the division or a municipality to perform simple one- and two-family plan reviews directly for a permit applicant on their behalf.

(4) "Division" is defined in OAR 918-001-0005.

(5) "Inspector" is a person appropriately certified under OAR chapter 918, division 098, 281, 695 or 780 who inspects work performed under the state specialty codes and approves the required inspections.



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(6) "Licensed Plan Reviewer or Inspector" is an individual who is licensed to perform specialty code inspections or plan reviews under ORS 455.457 and these rules.

(7) "Limited Licensed Plan Reviewer or Inspector" is an individual who:

(a) Is licensed to perform specialty code inspections or plan reviews under ORS 455.457 and these rules;

(b) Contracts directly with a municipality or the division to perform specialty code inspections or plan reviews on a temporary basis to backfill a vacant position or to supplement existing employees;

(c) Works under the authority of a designated state certified building official employed by a municipality or the division; and

(d) Whose contract or contracts to perform plan reviews and inspections do not exceed \$10,000 annually.

(8) "Municipality" is defined in ORS 455.010.

(9) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other entity, public or private, however organized.

(10) "Plan Reviewer" is a person who is appropriately certified under OAR chapter 918, division 098, 281 or 780 who reviews plans for compliance with the state specialty code(s) and approves the plans for permit and construction.

(11) "Registrant" means those businesses registered with the division under OAR chapter 918, division 090 rules to engage in the business of performing plan review and inspection services.

(12) "Specialty Code" is defined in ORS 455.010.

Stat. Auth: ORS 455.455, 455.457, 455.459, 455.461 & 455.463

Stats. Implemented: ORS 455.455, 455.457, 455.459, 455.461 & 455.463

Hist.: BCD 16-2000, f. 8-4-00, cert. ef. 10-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 29-2002, f. & cert. ef. 10-1-02; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-090-0200

### Licensing Scope

(1) An individual licensed before July 1, 2005 may perform specialty code plan reviews or inspections under ORS 455.457 and these rules as follows:

(a) Licensed Plan Reviewer or Inspector:

(A) Specialty code plan reviews or inspections not as an employee of a municipality or the division; or

(B) be Employed to perform plan reviews or inspections for one or more municipalities, but also may perform plan reviews or inspections as other than an employee of a municipality or the division.

(b) Limited Licensed Plan Reviewer or Inspector:

(A) Contracts directly with a municipality or the division to perform specialty code inspections or plan reviews on a temporary basis to backfill a vacant position or supplement existing employees; and

(B) Works under the authority of the designated state certified building official who is a municipal or state employee.

(2) An individual licensed on or after July 1, 2005 may perform specialty code plan reviews or inspections as outlined in Section (1), but are restricted in scope of work based on experience demonstrated under OAR 918-090-0210.

(3) An employee of a municipality or the division need not be licensed while performing plan reviews or inspections on behalf of another municipality while in the official capacity as an employee of the division or municipality.

Stat. Auth: ORS 455.457

Stats. Implemented: ORS 455.457

Hist.: BCD 16-2000, f. 8-4-00, cert. ef. 10-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 29-2002, f. & cert. ef. 10-1-02; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-090-0210

### Licensing Application Requirements

(1) Licensed Plan Reviewer or Inspector Applicants must submit an application on division-supplied forms that shall include a listing of current specialty code certifications and documentation of the experience required under subsection (4), along with a \$100 application fee. The applicant shall pass a division-approved examination on the substance and intent of the laws and rules related to the licensure of plan reviewers and inspectors. If an applicant fails to take the examination within 60 days of being approved to do so, the applicant must reapply. Applicants who fail the division approved examination shall be required to pay a \$25 fee and wait 30 days before retaking the required examination, but shall not make more than three attempts in a 12-month period.

(2) Limited Licensed Plan Reviewer or Inspector Applicants must submit an application on a division-supplied form, that shall include a list-

ing of current specialty code certifications and documentation of required experience under subsection (4), along with a \$50 application fee. The applicant shall identify the building inspection programs for which they will be working. No examination is required for the limited plan reviewer and inspector license.

(3) Applicants shall first apply for and obtain the required specialty code certifications under OAR chapter 918, division 098, 281, 695, or 780, prior to becoming a Licensed Plan Reviewer or Inspector, or a Limited Licensed Plan Reviewer or Inspector under these rules.

(4) In addition to the certifications required under subsection (3), beginning July 1, 2005, individuals desiring to be a Licensed Plan Reviewer or Inspector, or a Limited Licensed Plan Reviewer or Inspector must demonstrate a minimum level of experience to the division. The division will designate the scope of work allowed based on an applicants experience. License applicants must demonstrate the following to the division:

(a) To perform plan reviews and inspections on residential structures either

(A) Two years of construction or inspection related experience or its equivalent; or

(B) An approved one year inspection-related program and one year of construction or inspection-related experience; or

(C) A degree from an approved two year inspection related program or its equivalent.

(b) To perform plan reviews and inspections on all structures either

(A) An Oregon registration as an architect, an Oregon certified professional engineer, or a Bachelor or Master degree in architecture, civil or structural engineering; or

(B) Four years of construction or inspection related experience or its equivalent; or

(5) Licensed Plan Reviewer or Inspector, and Limited Licensed Plan Reviewer or Inspector must renew every two years on division-approved forms, submit the form with payment to the division before the license expiration date, meet continuing education requirements outlined in subsection (c), and update or change any information that is no longer current.

(a) Licensed Plan Reviewer or Inspector must pay a \$50 renewal fee.

(b) Limited Licensed Plan Reviewer or Inspector must pay a \$25 renewal fee.

(c) Licensed Plan Reviewer or Inspector, and Limited Licensed Plan Reviewer or Inspector must also meet continuing education requirements as determined by the division related to legislative changes in the substance and purpose of ORS 455.455 through 455.467, and the rules adopted thereunder.

(d) An individual who submits a license renewal after the expiration date must reapply for a new license and meet all requirements of a new applicant.

(6) A Licensed Plan Reviewer or Inspector, and Limited Licensed Plan Reviewer or Inspector license is valid only for the specialty code certifications held by the licensee. A licensed individual must work within the scope of the license or will be subject to sanctions under OAR 918-098-1500. The license shall be suspended or revoked if the licensee no longer holds at least one current certification as a plans examiner or inspector.

(7) Individuals denied licensure may appeal this decision to the director and request contested case procedures under ORS Chapter 183.

Stat. Auth: ORS 455.457

Stats. Implemented: ORS 455.457

Hist.: BCD 16-2000, f. 8-4-00, cert. ef. 10-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 29-2002, f. & cert. ef. 10-1-02; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-0000

### Purpose and Scope

(1) The purpose of OAR 918-098-0000 through 918-098-0470 is to implement:

(a) ORS 455.622 which instructs the Director of the Department of Consumer and Business Services to adopt requirements for certification of one and two family dwelling plans examiners and inspectors;

(b) ORS 455.720 which instructs the Director of the Department of Consumer and Business Services to establish certification, training and experience requirements for building officials, plans examiners and inspectors; and

(c) ORS 446.250 which instructs the Director of the Department of Consumer and Business Services to adopt minimum qualifications for certification of manufactured dwelling inspectors.

(2) These rules shall not restrict a municipality or the state from adopting additional employment qualifications or training requirements for building officials, plans examiners and inspectors as a condition of employment.

# ADMINISTRATIVE RULES

(3) These rules shall not apply to the certification of inspectors to perform inspections under the **Electrical Specialty Code, Plumbing Specialty Code, Elevator Specialty Code** or **Boiler and Pressure Vessel Specialty Code**.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 446.250, 455.622 & 455.720

Hist.: BCA 16-1992, f. & cert. ef. 8-11-92; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0200; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-0030

### Inspector Certification

(1) Applicants for plan review and inspector certification shall:

(a) Supply documented verification showing they meet the minimum experience, education or training requirements established for the type of certification sought; and

(b) Pay the required fee and pass a corresponding division-approved written examination and, where applicable, a division-approved practical evaluation, within 60 days of the date of division approval. If an applicant fails to take the examination within 60 days of being approved to do so, the applicant must re-apply.

(2) If the division fails to approve the application within 30 days from the date a completed application including verification of training and work experience is received, the applicant may appeal to the administrator and request contested case procedures under ORS Chapter 183.

(3) Applicants who fail a division-approved examination on the:

(a) First attempt shall be required to wait 30 days before retaking a required written or practical examination;

(b) Second attempt shall be required to wait at least 90 days before retaking the examination; and

(c) Third or subsequent attempts shall be required to wait one year before retaking the examination.

(4) Inspectors may be certified to enforce one or more specialty codes, standards, statutes or administrative rules provided they meet the minimum experience, education or training requirements and pass the corresponding examination.

(5) Persons certified as combination inspectors in other jurisdictions under a recognized code shall identify in the application, their number of hours experience in each code area in which they have performed work.

(6) Persons certified by a nationally recognized certification body as inspectors and plans examiners in the model code on which the particular specialty code is based may be approved as passing the model code provisions of the examination.

(7) Inspectors certified under these rules shall notify the division in writing of any address change.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: DC 24-1978, f. & ef. 9-1-78; DC 10-1980, f. & ef. 9-10-80; DC 4-1983, f. & ef. 1-12-83; Renumbered from 814-003-0055; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0045; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-0040

### Architectural Barriers Examination Requirements

In addition to the experience, education, training and examination requirements described in OAR 918-098-0070 through 918-098-0240, all building official, plan review and inspector certification applicants:

(1) Shall be required to pass a division-approved examination on Oregon laws governing accessibility to buildings by disabled persons; and

(2) Take the architectural barriers examination within 180 days of date of division approval. If an applicant fails to take the examination within 180 days of being approved to do so, the applicant must re-apply.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-0050

### Disqualification

(1) An applicant shall not be qualified to be certified as a building official, plans examiner or inspector if the person knowingly provides false information in an application or cheats before or during any examination. For the purpose of these rules, a person "cheats" if they bring or use unauthorized notes, examinations or examination answers at an examination, copy from another, allow another to copy or otherwise use unauthorized methods to gain an advantage or give another person an advantage during an examination.

(2) Persons denied certification under this rule shall be required to wait at least one year from the date the application was denied before they may re-apply for any certification.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCA 16-1992, f. & cert. ef. 8-11-92; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0280; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-0405

### In-training Programs

(1) An in-training program shall:

(a) Include education and training in the current applicable specialty code and the applicable provisions for the certification sought;

(b) Contain a course outline and curriculum description, including classroom hours and number of inspections or plan reviews;

(c) Be a minimum of 180 classroom hours; and

(d) Have a minimum of 10 inspections in each subject area listed under in-training programs or 10 plan reviews except as noted.

(2) The following shall be used as a guide to evaluate and approve in-training programs:

(a) Fire and life safety; A-level and B-level plans examiners; and A-level and B-level structural inspector in-training programs shall cover:

(A) Administration (does not require inspections or plan reviews);

(B) Occupancy requirements;

(C) Types of construction;

(D) Egress and accessibility requirements;

(E) Wall and ceiling coverings;

(F) Fire-resistive standards;

(G) Engineering regulations;

(H) Excavations, foundations and retaining walls;

(I) Energy conservation;

(J) Earthquake design;

(K) Roof load provisions;

(L) Agricultural buildings (does not require inspections);

(M) Elevator and escalator requirements (does not require inspections or plan reviews).

(b) A-level and B-level mechanical inspector in-training programs shall cover:

(A) Administration (does not require inspections);

(B) Warm-air heating systems;

(C) Appliance venting;

(D) Comfort cooling;

(E) Ducts;

(F) Fuel supply systems;

(G) Combustion air;

(H) Refrigeration systems;

(I) Ventilation systems;

(J) Miscellaneous equipment; i.e., commercial range hoods, gas log and room heater installations.

(c) One and two family dwelling plans examiner in-training program shall cover:

(A) Administration (does not require inspections or plan reviews);

(B) Building planning;

(C) Types of construction and interior finishes;

(D) Egress and accessibility requirements;

(E) Wall construction, assemblies and coverings;

(F) Floors structural adequacy and coverings;

(G) Roof-ceiling construction;

(H) Roof structure and coverings;

(I) Chimneys and fireplaces;

(J) Energy conservation;

(K) Manufactured dwelling alterations;

(L) Manufactured structure accessory buildings and structures.

(d) One and two family dwelling structural inspector in-training program shall cover:

(A) Administration (does not require inspections or plan reviews);

(B) Site inspection;

(C) Footings and foundations;

(D) Decay and termite protections;

(E) Wall construction, assemblies and coverings;

(F) Floors structural adequacy and coverings;

(G) Roof-ceiling construction;

(H) Roof coverings;

(I) Chimneys and fireplaces;

(J) Wood and metal framing;

(K) Energy conservation;

# ADMINISTRATIVE RULES

(L) Manufactured dwelling alterations;  
(M) Manufactured structure accessory buildings and structures.  
(e) One and two family dwelling mechanical inspector in-training program shall cover:

- (A) Administration (does not require inspections or plan reviews);
- (B) Warm-air heating systems;
- (C) Appliance venting;
- (D) Comfort cooling;
- (E) Ducts;
- (F) Fuel supply systems;
- (G) Combustion air;
- (H) Miscellaneous heating equipment;
- (I) Manufactured dwelling alterations.

(f) One and two family dwelling plumbing inspector in-training program shall cover:

- (A) Administration (does not require inspections or plan reviews);
- (B) Plumbing drawings (does not require inspections or plan reviews);
- (C) Plumbing mathematics (does not require inspections or plan reviews);
- (D) Basic plumbing theory (does not require inspections or plan reviews);
- (E) General regulations;
- (F) Fixtures;
- (G) Water heaters;
- (H) Water piping;
- (I) Drainage;
- (J) Vents;
- (K) Traps;
- (L) Storm systems.

(g) One and two family dwelling electrical inspector in-training program shall cover:

- (A) Administration (does not require inspections or plan reviews);
- (B) Definitions (does not require inspections or plan reviews);
- (C) Grounding and bonding;
- (D) Services, feeders, branch circuits and overcurrent protection;
- (E) Raceways and enclosures;
- (F) Conductors;
- (G) Motors and controls;
- (H) Utilization and general use equipment;
- (I) Special occupancies and equipment;
- (J) Calculations (does not require inspections or plan reviews);
- (K) Low voltage and limited energy circuits;
- (L) Blueprint reading (does not require inspections or plan reviews);
- (M) Electrical theory (does not require inspections or plan reviews);
- (N) Temporary service and wiring;
- (O) Permits and inspection (does not require inspections or plan reviews); and
- (P) Swimming pools, spas, hot tubs and hydromassage tubs.

Stat. Auth.: ORS 455.622

Stats. Implemented: ORS 455.622

Hist.: BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-0422

### Two-Year Diversified Building Inspection Technology Program Curriculum Requirements

(1) Satisfactory completion of an approved two-year diversified building inspection technology program administered by an education institution shall be accepted by the division as compliance with the minimum experience, education or training requirements for all of the following certifications:

- (a) B-level structural plans examiner;
- (b) B-level structural inspector;
- (c) B-level mechanical inspector;
- (d) One and two family dwelling plans examiner;
- (e) One and two family dwelling structural inspector; and
- (f) One and two family dwelling mechanical inspector.

(2) A two-year diversified building inspection technology program curriculum shall include evidence the following topics are covered, either as a specific course or as part of another class:

- (a) Appropriate construction methods, materials and installation methods, including all of the following totaling a minimum of 90 hours:
  - (A) Product approvals; i.e., listings, evaluation standards and reports;
  - (B) Recognized standards;
  - (C) Knowledge of construction methods and types;

- (D) Knowledge of construction materials;
- (E) Knowledge of installation standards and specifications; and
- (F) Appropriate field trips;

(b) Current, applicable building codes, including all of the following:  
(A) **Structural Specialty Code** or the model code on which it is based totaling a minimum of 120 hours;

(B) **Mechanical Specialty Code** or the model code on which it is based totaling a minimum of 90 hours;

(C) **One and Two Family Dwelling Specialty Code**, or the model code on which it is based, structural and mechanical provisions totaling a minimum of 60 hours;

(c) Field laboratory work, including all of the following:

(A) Plan review to verify compliance with the Structural Specialty Code or the model code on which it is based totaling a minimum of 60 hours, and with the One and Two Family Dwelling Specialty Code structural provisions totaling a minimum of 30 hours: Appropriate design methods, calculations, specifications and plan submittals in all of the following:

- (i) Knowledge of design methods; i.e., seismic, wind and snow;
- (ii) Knowledge of design and materials terminology;
- (iii) Knowledge of material design criteria; i.e., wood, steel, masonry and concrete, and prescriptive wood requirements;
- (iv) Knowledge of special design requirements; i.e., log buildings, pole buildings and retaining walls; and
- (v) Appropriate "take-home" examples.

(B) Field inspections to verify compliance with the Structural Specialty Code or the model code on which it is based totaling a minimum of 120 hours covering all of the following:

- (i) Inspection techniques;
- (ii) Construction terminology;
- (iii) Experience in all applicable required inspections, including special inspections; and
- (iv) Recognition and identification of critical construction components.

(C) Field inspections to verify compliance with the Mechanical Specialty Code or the model code on which it is based totaling a minimum of 90 hours covering all of the following:

- (i) Inspection techniques;
- (ii) Construction terminology;
- (iii) Experience in all applicable required inspections, including special inspections; and
- (iv) Recognition and identification of critical mechanical components.

(D) Field inspections to verify compliance with the One and Two Family Dwelling Specialty Code, or the model code on which it is based, structural and mechanical provisions totaling a minimum of 60 hours covering all of the following:

- (i) Inspection techniques;
- (ii) Construction terminology;
- (iii) Experience in all applicable required inspections, including special inspections; and
- (iv) Recognition and identification of critical construction and mechanical components.

(d) Theory and code application totaling a minimum of 30 hours covering all of the following:

- (A) Interpretation processes;
- (B) Alternate methods;
- (C) Local and state appeal processes;
- (D) Understanding and intent of why code provisions exist;
- (E) Code development and code change processes;
- (F) Code administration and enforcement; and
- (G) Special inspection procedures.

(e) Appropriate minimum supporting curriculum totaling a minimum of 250 hours covering all of the following:

- (A) Interpersonal communication skills;
- (B) Basic writing skills;
- (C) Blueprint reading;
- (D) Applicable code administration and enforcement;
- (E) Basic algebra and geometry; and
- (F) Computer applications.

(f) Combination of field and office work experience in a local jurisdiction totaling a minimum of 360 hours;

(g) Passing a final written examination and practical evaluation administered by the education institution for each certification sought; and

(h) A certificate or degree on completion of program.

(3) The recommended classroom student to teacher ratio is 30 to 1.



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(4) The laboratory field work student to teacher ratio shall not exceed 15 to 1.

(5) The practical evaluation student to teacher ratio shall be 1 to 1.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-0423

### One-Year Focused Building Inspection Technology Program Curriculum Requirements

(1) Satisfactory completion of an approved one-year focused building inspection technology program administered by an education institution shall be accepted by the division as compliance with one of the minimum experience, education or training requirements for one of the following certifications:

(a) B-level structural plans examiner;

(b) B-level structural inspector;

(c) B-level mechanical inspector; or

(d) One and two family dwelling plans examiner, structural inspector and mechanical inspector.

(2) A one-year focused building inspection technology program curriculum shall include evidence the following topics are covered, either as a specific course or as part of another class, in the type of certification the curriculum approval is sought:

(a) B-level structural plans examiner:

(A) Appropriate design methods, calculations, specifications and plan submittals totaling a minimum of 45 hours:

(i) Product approvals; i.e., listings, evaluation standards and reports;

(ii) Recognized standards;

(iii) Knowledge of design methods; i.e., seismic, wind and snow;

(iv) Knowledge of design and material terminology;

(v) Knowledge of material design criteria; i.e., wood, steel, masonry and concrete, and prescriptive wood requirements;

(vi) Knowledge of special design requirements; i.e., log buildings, pole buildings and retaining walls;

(vii) Appropriate "take-home" examples.

(B) **Structural Specialty Code** or the model code on which it is based totaling a minimum of 120 hours;

(C) Plan review work for a minimum of 120 hours;

(D) Theory and code application for a minimum of 15 hours:

(i) Interpretation processes;

(ii) Alternate methods;

(iii) Local and state appeal processes;

(iv) Understanding and intent of why code provisions exist;

(v) Code development and code change processes; and

(vi) Code administration and enforcement.

(E) Appropriate minimum supporting curriculum totaling a minimum of 125 hours:

(i) Interpersonal communication skills;

(ii) Basic writing skills;

(iii) Computer application;

(iv) Applicable code administration and enforcement; and

(v) Basic algebra and geometry.

(F) Work experience assisting in A-level or B-level plan review in a local jurisdiction totaling a minimum of 180 hours;

(G) Passing a final written examination and practical evaluation administered by an education institution; and

(H) A certificate on completion of program.

(b) B-level structural inspector:

(A) Appropriate construction methods, materials and installation methods totaling a minimum of 45 hours:

(i) Product approvals; i.e., listings, evaluation standards and reports;

(ii) Recognized standards;

(iii) Knowledge of construction methods and types;

(iv) Knowledge of construction materials;

(v) Knowledge of installation standards and specifications; and

(vi) Appropriate field trips.

(B) **Structural Specialty Code** or the model code on which it is based totaling a minimum of 120 hours;

(C) Field laboratory work in the Structural Specialty Code or the model code on which it is based totaling a minimum of 120 hours:

(i) Inspection techniques;

(ii) Construction terminology;

(iii) Experience in all applicable required inspections, including special inspections; and

(iv) Recognition and identification of critical construction components.

(D) Theory and code application totaling a minimum of 15 hours:

(i) Interpretation processes;

(ii) Alternate methods;

(iii) Local and state appeal processes;

(iv) Understanding and intent of why code provisions exist;

(v) Code development and code change processes;

(vi) Code administration and enforcement; and

(vii) Special inspection procedures.

(E) Appropriate minimum supporting curriculum totaling a minimum of 125 hours:

(i) Interpersonal communication skills;

(ii) Basic writing skills;

(iii) Blueprint reading;

(iv) Applicable code administration and enforcement;

(v) Basic algebra and geometry; and

(vi) Computer applications.

(F) Combination of field and office work experience assisting in A-level or B-level structural inspections in a local jurisdiction totaling a minimum of 180 hours;

(G) Passing a final written examination and practical field evaluation administered by an education institution; and

(H) A certificate on completion of program.

(c) B-level mechanical inspector:

(A) Appropriate construction methods, materials and installation methods totaling a minimum of 45 hours:

(i) Product approvals; i.e., listings, evaluation standards and reports;

(ii) Recognized standards;

(iii) Knowledge of mechanical methods and types;

(iv) Knowledge of mechanical materials;

(v) Knowledge of installation standards and specifications; and

(vi) Appropriate field trips.

(B) **Mechanical Specialty Code** or the model code on which it is based totaling a minimum of 90 hours;

(C) Field laboratory work in the Mechanical Specialty Code or the model code on which it is based totaling a minimum of 90 hours:

(i) Inspection techniques;

(ii) Construction terminology;

(iii) Experience in all applicable required inspections, including special inspections; and

(iv) Recognition and identification of critical mechanical components.

(D) Theory and code application totaling a minimum of 15 hours:

(i) Interpretation processes;

(ii) Alternate methods;

(iii) Local and state appeal processes;

(iv) Understanding and intent of why code provisions exist;

(v) Code development and code change processes;

(vi) Code administration and enforcement; and

(vii) Special inspection procedures.

(E) Appropriate minimum supporting curriculum totaling a minimum of 125 hours:

(i) Interpersonal communication skills;

(ii) Basic writing skills;

(iii) Blueprint reading;

(iv) Applicable code administration and enforcement;

(v) Basic algebra and geometry; and

(vi) Computer applications.

(F) Combination of field and office work experience assisting in B-level mechanical inspections in a local jurisdiction totaling a minimum of 180 hours;

(G) Passing a final written examination and practical evaluation administered by an education institution; and

(H) A certificate on completion of program.

(d) One and two family plans examiner, structural inspector and mechanical inspector:

(A) Appropriate design methods, calculations, specifications and plan submittals totaling a minimum of 45 hours:

(i) Product approvals; i.e., listings, evaluation standards and reports;

(ii) Recognized standards;

(iii) Knowledge of design methods;

(iv) Knowledge of design and material terminology;

(v) Knowledge of material design criteria; i.e., wood, steel, masonry and concrete, and prescriptive wood requirements;

# ADMINISTRATIVE RULES

(vi) Knowledge of special design requirements;  
(vii) Knowledge of mechanical installation standards and specifications; and

(viii) Appropriate “take-home” examples.

(B) **One and Two Family Dwelling Specialty Code** or the model code on which it is based totaling a minimum of 120 hours;

(C) Plan review work for a minimum of 120 hours;

(D) Theory and code application for a minimum of 15 hours:

(i) Interpretation processes;

(ii) Alternate methods;

(iii) Local and state appeal processes;

(iv) Understanding and intent of why code provisions exist;

(v) Code development and code change processes; and

(vi) Code administration and enforcement.

(E) Field laboratory work:

(i) Inspection and plan review techniques;

(ii) Construction terminology;

(iii) Experience in all applicable required inspections and plan reviews; and

(iv) Recognition and identification of critical construction and mechanical components.

(F) Appropriate minimum supporting curriculum totaling a minimum of 125 hours:

(i) Interpersonal communication skills;

(ii) Basic writing skills;

(iii) Blueprint reading;

(iv) Applicable code administration and enforcement;

(v) Basic algebra and geometry; and

(vi) Computer applications.

(G) Combination of field and office work experience assisting in one and two family dwelling plans examinations and dwelling inspections in a local jurisdiction totaling a minimum of 180 hours;

(H) Passing a final written examination and practical field evaluation administered by an education institution; and

(I) A certificate on completion of program.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; BCD 7-1998, f. 3-31-98, cert. ef. 4-1-98; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-0440

### Processing of Certification and Continuing Education Information

The division shall maintain current certification, code change continuing education and examination records for building officials, plans examiners and inspectors as long as they remain certified.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCA 16-1992, f. & cert. ef. 8-11-92; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0260; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-0450

### Continuing Education Requirements for Building Officials

(1) Building officials shall be required to obtain six hours continuing education credits each year in classes related to the duties of a building official. The building official may select relevant classes. In calendar years when the legislature meets in regular session, the classes must also include at least one division-approved class covering new legislation relating to the administration and enforcement of building inspection programs. Classes covering new legislation shall be reported as required by OAR 918-098-0470.

(2) Building officials also certified as inspectors or plan reviewers shall be required to meet the continuing education requirements described in OAR 918-098-0460.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCA 16-1992, f. & cert. ef. 8-11-92; BCA 33-1993, f. & cert. ef. 12-14-93; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0610; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-0460

### Continuing Education Requirements for Inspectors and Plans Examiners

(1) Every inspector and plans examiner certified under these rules shall be required to obtain at least six hours of continuing education credit each year in classes related to their duties as an inspector or plans examiner. Inspectors and plans examiners certified under two or more specialty codes shall be required to obtain at least 12 hours of continuing education credit each year.

(2) In code change years, inspectors and plans examiners shall, no later than 12 months after adoption, be required to attend at least one division-approved class covering recent code changes for each certification in which a code change has been adopted. This requirement shall be in addition to the continuing education requirement described in section (1) of this rule. However, these credits may be used to satisfy the requirement in section (1) of this rule. Classes covering code changes shall be reported as required by OAR 918-098-0470.

(3) The division may approve credit for code change courses taken prior to the code adoption date.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCA 16-1992, f. & cert. ef. 8-11-92; BCA 33-1993, f. & cert. ef. 12-14-93; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0620; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1000

### Purpose and Scope

(1) These rules establish minimum training, experience and certification requirements for building officials and persons who perform specialty code plan review and inspections in this state. The certification requirements for plumbing and electrical inspectors are located in OAR 918-695-0400 through 918-695-0410 and 918-281-0000 through 918-281-0060. The rules also provide a transitional period for persons in an in-training, cross-training or approved educational program allowing them to apply for an Oregon Inspector Certification and an ICC certification or to apply for an Oregon Code Certification.

(2) Nothing in these rules is intended to allow a person to violate statute or rule or change certification and licensing requirements set forth in statute.

(3) Nothing in these rules prevents the administrator from waiving procedural requirements in the rare circumstance where substantial compliance is impracticable.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 446.250, 455.622 & 455.720

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1005

### Definitions

As used in OAR Chapter 918, division 098, unless the context requires otherwise:

(1) “A-level Structures” means structures regulated by the Oregon Structural Specialty Code that require a state fire and life safety plan review or are required to be designed by an Oregon licensed architect or engineer pursuant to ORS Chapter 671.

(2) “B-level Structures” means structures regulated by the Oregon Structural Specialty Code that do not require a state fire and life safety plan review and are not required to be designed by an Oregon licensed architect or engineer pursuant to ORS Chapter 671.

(3) “Building Inspection Technology” means an approved curriculum meeting the requirements of OAR 918-098-1420.

(4) “Classroom” means an instructional environment the instructor believes is most conducive for the student to learn the material in a specific unit.

(5) “Code-Change Course” means a continuing education course that addresses changes to specialty codes, code standards, or administrative rules addressing code.

(6) “Commercial Structures” means structures regulated by the **Oregon Structural Specialty Code**.

(7) “Cross-Training Program” means a one-and two-family dwelling or residential plans examiner or inspector on-the-job cross-training program and practical evaluation that meets the minimum training and education requirements established by the division with the advice of the appropriate state advisory board.

(8) “Design” means professional, engineering or technical design of systems or components that requires computations, research or special knowledge.

(9) “Diversified” means varied experience in structural steel, complex wood framing and concrete or masonry construction.

(10) “Division” means the Building Codes Division.

(11) “Education Institution” is an institution accredited through a nationally recognized body and is usually governed by a local board and receives a state recognition.

(12) “Education Program” is a minimum two-year diversified or one-year focused building inspection technology program administered by an education institution.

# ADMINISTRATIVE RULES

(13) "International Code Council certification" means a certification issued by the International Code Council demonstrating that an individual has passed a specific International Code Council certification examination.

(14) "In-Training Program" means a division-approved on-the-job training and practical evaluation program designed to train a person to qualify to sit for examination in a particular code.

(15) "Nationally Recognized Certification Body" means a body or organization that provides formal recognition that a person possesses minimum knowledge of a recognized code.

(16) "High Priority Training" means periodic continuing education training identified by the division that addresses new technologies or specific problem areas identified by the division.

(17) "Oregon Code Certification" means a certification issued by the division for: Building Official; Fire and Life Safety Plans Examiner; A-Level Structural Plans Examiner; Recreational Vehicle Inspector Certification; Manufactured Structure Construction Inspector; Park and Camp Inspector; Manufactured Structure Installation Inspector; A-Level Structural and Mechanical Inspector; B-Level Structural Plans Examiner; B-Level Structural and Mechanical Inspector; and One-and-Two Family Dwelling Plans Examiner; One-and-Two Family Dwelling Structural Inspector; One-and-Two Family Dwelling Electrical Inspector; One-and-Two Family Dwelling Plumbing Inspector; and One-and-Two Family Dwelling Mechanical Inspector.

(18) "Oregon Inspector Certification" means a certification issued by the division demonstrating that a person has passed a division-approved examination that covers Oregon laws relating to state building codes including, but not limited to, architectural barrier laws governing accessibility to buildings by disabled persons.

(19) "Practical Experience Evaluation" means a division-approved evaluation to determine if a person meets the practical experience equivalent of 50 percent of the required work experience listed in the appropriate certification categories defined in OAR 918-098-1030.

(20) "Recognized Code" means a regulatory document enforced by one or more state or local governments that prescribes minimum standards for building materials and construction methods of buildings or structures and building service equipment including plumbing, mechanical and electrical systems.

(21) "Residential Structures" means one-and two-family dwellings, townhouses and rowhouses regulated by the Oregon Residential Specialty Code, excluding apartment buildings.

(22) "Year of Experience" means 2,000 hours of documented experience.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCA 16-1992, f. & cert. ef. 8-11-92; BCD 23-1996(Temp), f. & cert. ef. 10-21-96; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0220; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0010, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1010

### Certification Requirements and Scope of Work Allowed

(1) Unless otherwise stated in this rule, every person who performs building official duties building code inspections, or plan reviews must possess either:

(a) An Oregon Code Certification as defined in OAR 918-098-1005; or

(b) An Oregon Inspector Certification and the current appropriate International Code Council certification for the work being performed, and the minimum level of experience as follows:

(A) Two years of construction or inspection related experience or its equivalent; or

(B) An approved one year inspection-related education program and one year of construction or inspection-related experience; or

(C) A degree from an approved two year inspection related education program or its equivalent; or

(D) Be a registered Oregon architect, a certified Oregon professional engineer, or have a bachelor or master degree in architecture or civil or structural engineering.

(2) Notwithstanding (1)(b) a person may perform the duties of a building official with only the Oregon Inspector Certification providing the person passes the International Code Council Certified Building Official Legal Management examination within six months of hire.

(3) Persons with valid Oregon Code Certifications may perform work based on the type of certification they hold as defined in OAR 918-098-1015.

(4) Unless otherwise stated, persons with a valid Oregon Inspector Certification and a current International Code Council certification may perform work based on the type of International Code Council Certification they possess as follows:

(a) Certified Building Official Legal / Management may oversee a jurisdictions administration and enforcement of the state building code for those specialty codes assumed by the jurisdictions pursuant to ORS 455.148 or 455.150. Building officials may not perform plan reviews or inspections unless they possess the appropriate certification for the plan review or inspection being performed.

(b) Commercial Building Inspector certificate holders may conduct construction inspections for:

(A) All work regulated by the **Oregon Structural Specialty Code**; and

(B) Structural work on townhouse structures, rowhouse structures, and apartment buildings regulated by the Oregon Residential Specialty Code.

(c) Commercial Building Plans Examiner certificate holders may review construction plans for:

(A) Compliance with the provisions of the **Oregon Structural Specialty Code and Oregon Fire Code** for all work regulated by the Oregon Structural Specialty Code, except the fire and life safety plan review provisions for structures required to receive a state fire and life safety plan review; and

(B) Fire and life safety construction on townhouse structures, rowhouse structures, and apartment buildings regulated by the **Oregon Residential Specialty Code**.

(d) Commercial Fire Plans Examiner certificate holders may review construction plans for compliance with the fire and life safety plan review provisions of the **Oregon Structural Specialty Code and the Oregon Fire Code**.

(e) A Commercial Mechanical Inspector certificate holder may conduct construction inspections and may review construction plans for:

(f) All work regulated by the **Oregon Mechanical Specialty Code**; and

(B) Mechanical work on townhouse structures, rowhouse structures and apartment buildings regulated by the Oregon Residential Specialty Code.

(g) A Residential Building Inspector certificate holder may conduct construction inspections and plan reviews for:

(A) Structural work regulated by the Oregon Residential Specialty Code, except apartment buildings; and

(B) Structural work on manufactured dwelling alterations and manufactured structure accessory buildings and structures under the **Oregon Manufactured Dwelling and Park Specialty Code**.

(f) A Residential Mechanical Inspector certificate holder may conduct inspections for:

(A) Mechanical work regulated by the **Oregon Residential Specialty Code**, except for apartment buildings; and

(B) Mechanical work on manufactured dwelling alterations under the **Oregon Manufactured Dwelling and Park Specialty Code**.

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

Stat. Auth.: ORS 455.720 & 455.730

Stats. Implemented: ORS 455.720 & 455.730

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1015

### Scope of Work for Persons Holding Oregon Code Certifications

Persons who possess a current Oregon Code Certification may perform inspections and plan reviews based on the class designated on their certificate. The classes, other than electrical and plumbing inspector classifications found in OAR 918-281-0020 and 918-695-0400, are:

(1) Building Official. Persons certified as a Building Official legal management certification may oversee jurisdictions' administration and enforcement of the state building code for those specialty codes assumed by the jurisdiction(s) pursuant to ORS 455.148 or 455.150. Building officials may not perform plan -reviews or inspections unless they possess the appropriate certification for the plan review or inspection being performed.

(2) Fire and Life Safety. Persons certified as fire and life safety plans examiners review construction plans for compliance with the fire and life safety plan review provisions of the Oregon Structural Specialty Code and the Oregon Fire Code for any structure regulated by the Oregon Structural Specialty Code.

(3) A-Level.

(a) Persons certified as A-level structural plans examiners:



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(A) May review construction plans for compliance with the provisions of the **Oregon Structural Specialty Code and Oregon Fire Code** for all work regulated by the **Oregon Structural Specialty Code**, except the fire and life safety plan review provisions for structures required to receive a state fire and life safety plan review; and

(B) May review construction plans for work that falls within the B-level structural plans examiner classification.

(b) Persons certified as A-level structural inspectors:

(A) May conduct construction inspections of all work regulated by the **Oregon Structural Specialty Code**; and

(B) May conduct inspections of work that falls within the B-level structural inspector classification.

(c) Persons certified as A-level mechanical inspectors:

(A) May conduct construction inspections and may review construction plans for all work regulated by the **Mechanical Specialty Code**; and

(B) May conduct inspections and may review construction plans for work that falls within the B-level mechanical inspector classification.

(4) B-Level.

(a) Persons certified as B-level structural plans examiners may review construction plans for compliance with the provisions of the **Oregon Structural Specialty Code and Oregon Fire Code** for work regulated by the **Oregon Structural Specialty Code**, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS Chapter 671.

(b) Persons certified as B-level structural inspectors may conduct construction inspections of work regulated by the **Oregon Structural Specialty Code**, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS Chapter 671.

(c) Persons certified as B-level mechanical inspectors may conduct construction inspections of work regulated by the **Mechanical Specialty Code**, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS Chapter 671.

(d) Persons certified as B-level structural plans examiners, B-level structural inspectors or B-level mechanical inspectors:

(A) May qualify to be certified to review construction plans or conduct inspections of structures regulated by the **Oregon Residential Specialty Code**; and

(B) Shall not be authorized to review construction plans or conduct inspections of structures that are outside the B-level classification without first obtaining the appropriate certification.

(5) One and two family dwelling or residential.

(a) Persons certified as one and two family dwelling or residential.

(A) Structural inspectors may conduct construction inspections of structural work regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings, and manufactured dwelling alterations and manufactured structure accessory buildings and structures under the **Oregon Manufactured Dwelling and Park Specialty Code**.

(B) Mechanical inspectors may conduct inspections of mechanical work regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings, and manufactured dwelling alterations under the **Oregon Manufactured Dwelling and Park Specialty Code**.

(C) Plumbing inspectors may conduct inspections of plumbing work regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings;

(D) Electrical inspectors conduct inspections of electrical work regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings; and

(b) Persons certified as a one-and-two family dwelling plans examiners review construction plans for compliance with provisions of the **Oregon Residential Specialty Code**, excluding apartment buildings, and manufactured dwelling alterations and manufactured structure accessory buildings and structures under the **Oregon Manufactured Dwelling and Park Specialty Code**.

(c) Persons certified as a one and two family dwelling or residential inspectors and plans examiners shall not be authorized to review construction plans or conduct inspections of either A-level or B-level structures without the required commercial A-level or B-level certification.

(d) See OAR 918-098-1325 for additional requirements of one and two family dwelling residential inspectors and plans examiners performing manufactured dwelling alteration inspections or plan reviews.

(e) See OAR 918-098-1330 for additional requirements of one and two family dwelling residential inspectors performing manufactured structure accessory structure or accessory building inspections.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: DC 24-1978, f. & ef. 9-1-78; DC 10-1980, f. & ef. 9-10-80; DC 4-1983, f. & ef. 1-12-83; Renumbered from 814-003-0065; BCA 16-1992, f. & cert. ef. 8-11-92; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0065; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; Renumbered from 918-098-0060, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1025

### Oregon Inspector Certification Application Process; Testing Procedures

(1) Unless a person is qualified to apply under 918-098-1040 or 918-098-1042, or applies for an electrical or plumbing inspector certification pursuant to OAR 918-281-0020 and 918-695-0400, all persons who seek certification to perform the duties of a building official, inspector or plans examiner must apply for the Oregon Inspector Certification as follows:

(a) Submit a division-approved application with a payment of \$22.00; and

(b) Successfully pass the Oregon Inspector Certification examination.

(2) Applicants for an Oregon Inspector Certification or and Oregon Code Certification who fail the examination may request to retake the examination after 30 days for the first attempt, 60 days for the second attempt and 90 days for the third and subsequent attempts, up to a year from the date of application.

(3) If an applicant fails to take the exam within 60 days of being approved to do so, the applicant must re-apply under subsection (1) of this rule.

Stat. Auth.: ORS 455.720 & 455.730

Stats. Implemented: ORS 455.720 & 455.730

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1030

### Practical Experience Evaluation Requirements

(1) The following evaluation process is established to determine a practical experience equivalent for the Oregon code certifications issued under these rules.

(2) Satisfactory completion of an approved evaluation shall be accepted by the division or a building official as compliance with 50 percent of the minimum experience requirements for the specific Oregon code certification.

(a) The evaluation may include, but is not limited to, a field evaluation and division-approved written examination.

(3) When a field evaluation is used, the jurisdiction with the intent to hire shall;

(a) Schedule the evaluators from a list provided by the division; and

(b) Coordinate appropriate job site locations for the evaluators and applicants, when applicable.

(4) There shall be two or more division-approved evaluators, that may include a representative of the division, for each field evaluation who shall:

(a) Have at least two years inspection or plan review experience with the same or higher certification in the same discipline for which the person has applied; and

(b) Not be employed by the municipality that is sponsoring the applicant.

(5) The applicant may appeal the evaluation results to the administrator and request a contested case hearing under ORS Chapter 183.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0065, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1040

### Transitional Application Process

(1) A person who submitted an application for an **Oregon Code Certification** or who is enrolled in an approved educational program, or an in-training or cross-training program prior to July 1, 2005 and applies after July 1, 2005 may:

# ADMINISTRATIVE RULES

(a) Apply for and obtain the desired **Oregon Code Certification** as prescribed by these rules; and

(b) Pass a division-approved examination which shall include questions on Oregon laws governing accessibility to buildings by disabled persons; or

(c) Apply for the Oregon Inspector Certification and obtain the appropriate ICC certification.

(2) Persons who have submitted an application for an Oregon Code Certification prior to July 1, 2005 shall be allowed to test and retest in accordance with OAR 918-098-1025. For those applications dated prior to July 1, 2004, the applicants shall be entitled to attempt the test one more time after July 1, 2005 and if unsuccessful, the applicant shall apply for an Oregon Inspector Certification in accordance to these rules.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 455.720 & 455.730  
Stats. Implemented: ORS 455.720 & 455.730  
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1042

### Building Official Transitional Period

Between July 1, 2005 and December 31, 2005, persons who apply for certification to perform the duties of a building official may either apply for an Oregon Inspector Certification and obtain the appropriate International Code Council Certified Building Official Legal/Management or may apply for the Oregon Building Official certification under OAR 918-098-1045 within 6 months of hire.

Stat. Auth.: ORS 455.730, 455.735 & 455.720  
Stats. Implemented: ORS 455.730, 455.735 & 455.720  
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1045

### Certification of Building Officials

A person may apply for certification as a building official on a division-approved form. The applicant shall pay the required fee and pass a division-approved building official certification examination covering:

(1) Oregon statutes, administrative rules and practices on the administration and enforcement of building inspection programs; and

(2) The administrative sections of the **Oregon Residential Specialty Code, Oregon Structural Specialty Code, Mechanical Specialty Code, Oregon Plumbing Specialty Code, Oregon Electrical Specialty Code and Oregon Manufactured Dwelling and Park Specialty Code**. Applicants who fail the approved examination may retake the examination in accordance with OAR 918-098-1025.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 455.730  
Stats. Implemented: ORS 455.730  
Hist.: BCA 16-1992, f. & cert. ef. 8-11-92; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0410; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; Renumbered from 918-098-0020, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1050

### Fire and Life Safety Plans Examiners Minimum Experience, Education and Training Requirements

(1) Only applicants who qualify to apply for an Oregon Code Certification under OAR 918-098-1040 may apply on a division-approved form for an Oregon fire and life safety plans examiner certification and shall demonstrate compliance with one of the following minimum experience, education or training requirements:

(a) Oregon registration as an architect or certified professional engineer; or

(b) A Bachelor or Master degree in architecture or civil or structural engineering and 2 years of diversified experience designing, constructing or inspecting A-level structures; or

(c) 4 years of diversified experience designing A-level structures; or

(d) 4 years of diversified experience as an inspector or plans examiner in another jurisdiction reviewing A-level structures for compliance with a recognized code for building construction;

(e) Certification as an A-level structural plans examiner; and

(A) 1 year of experience performing structural plan review on A-level structures; or

(B) Completion of a fire and life safety plans examiner in-training program; or

(f) Certification as an A-level inspector; and

(A) 1 year of experience performing structural inspections of A-level structures for compliance with a recognized code for building construction; and

(B) Completion of a fire and life safety plans examiner in-training program.

(g) 4 years of diversified experience conducting fire and life safety plan reviews on A-level structures for the Office of State Fire Marshal or a local fire jurisdiction under the supervision of a certified fire and life safety plans examiner:

(A) Persons certified as a Fire Prevention Officer I or its equivalent shall be granted 1 year of credit toward the required experience.

(B) Persons certified as a Fire Prevention Officer II or its equivalent shall be granted 2 years of credit toward the required experience; or

(h) Any combination of education, training or diversified experience listed in sections (a) through (g) of this rule totaling 4 years.

(2) Persons who possess one or both of the International Conference of Building Officials (ICBO) plans examiner or International Fire Code Institute (IFCI) fire code inspector certification shall be granted 1 year of credit toward the experience requirements listed in section(1) of this rule. This section does not apply to persons who have completed an in-training or cross-training program or a practical experience evaluation per OAR 918-098-1030

Stat. Auth.: ORS 455.720  
Stats. Implemented: ORS 455.720

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 14-1997(Temp), f. 9-30-97, cert. ef. 10-4-97; BCD 2-1998, f. 1-29-98, cert. ef. 4-1-98; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0070, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1055

### A-level Structural Plans Examiners Minimum Experience, Education and Training Requirements

(1) Only applicants who qualify to apply for an Oregon Code Certification under OAR 918-098-1040 may apply for an Oregon A-level structural plans examiner certification on a division-approved form and shall demonstrate compliance with one of the following minimum experience, education or training requirements:

(a) Oregon registration as an architect or certified professional engineer; or

(b) A Bachelor or Master degree in architecture or civil or structural engineering and 2 years of diversified experience designing, constructing or inspecting A-level structures; or

(c) 4 years of diversified experience designing A-level structures; or

(d) 4 years of diversified experience as a plans examiner in another jurisdiction reviewing A-level structures for compliance with a recognized code for building construction; or

(e) Certification as an A-level structural inspector and:

(A) 1 year of experience reviewing plans for compliance with fire and life safety requirements or performing structural inspections on A-level structures; or

(B) Completion of an A-level structural plans examiner in-training program; or

(f) Certification as a fire and life safety plans examiner or B-level structural plans examiner or B-level structural inspector and:

(A) 1 year of experience reviewing plans for compliance with fire and life safety requirements or performing structural plan reviews or inspections on B-level structures; and

(B) Completion of an A-level structural plans examiner in-training program; or

(g) Certification as a residential plans examiner and:

(A) 2 years of experience performing structural plan reviews on dwellings; and

(B) Completion of an A-level structural plans examiner in-training program; or

(h) Completion of a division-approved education program in building inspection technology covering the **Oregon Structural Specialty Code** or the model code on which it is based and 2 years of diversified experience designing or constructing A-level structures; or

(i) Any combination of education, training or diversified experience listed in subsections (b) through (h) of this section totaling 4 years.

(2) Persons certified by a nationally recognized certification body to perform structural plan reviews on A-level structures according to a recognized code for building construction shall be granted 1 year of credit toward the experience requirements listed in section(1) of this rule. This section does not apply to persons who have completed an in-training or cross-training program or a practical experience evaluation per OAR 918-098-1030.

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

Stat. Auth.: ORS 455.720  
Stats. Implemented: ORS 455.720

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0080, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

# ADMINISTRATIVE RULES

## 918-098-1060

### A-level Structural Inspectors Minimum Experience, Education and Training Requirements

(1) Only applicants who qualify to apply for an Oregon Code Certification under OAR 918-098-1040 may apply for an Oregon A-level structural inspector on a division-approved form and shall demonstrate compliance with one of the following minimum experience, education or training requirements:

(a) Oregon registration as an architect or certified professional engineer; or

(b) A Bachelor or Master degree in architecture or civil or structural engineering and 2 years of diversified experience designing, constructing or inspecting A-level structures; or

(c) 4 years of diversified experience designing A-level structures; or

(d) 4 years of experience as an inspector in another jurisdiction inspecting A-level structures including 2 years of diversified experience inspecting for compliance with a recognized code for building construction; or

(e) 4 years of experience in construction or construction code enforcement of A-level structures with a recognized code, of which 2 years of is in diversified work; or

(f) Completion of a division-approved education and training program in building inspection technology covering the Oregon Structural Specialty Code or the model code on which it is based and 2 years of diversified experience designing or constructing A-level structures; or

(g) Certification as an A-level plans examiner or fire and life safety plans examiner; or

(h) Certification as a B-level structural plans examiner or B-level structural inspector and:

(A) 1 year of experience performing structural inspections or plan reviews on B-level structures; and

(B) Completion of an A-level structural inspector in-training program; or

(i) Certification as a residential plans examiner or structural inspector and:

(A) 2 years of experience performing structural inspections or plan reviews on dwellings; and

(B) Completion of an A-level structural inspector in-training program; or

(j) Any combination of education, training or diversified experience listed in subsections (b) through (i) of this section totaling 4 years.

(2) Persons certified by a nationally recognized certification body to perform inspections on A-level structures according to a recognized code for building construction shall be granted 1 year of credit toward the experience requirements listed in section(1) of this rule. This section does not apply to persons who have completed an in-training or cross-training program or a practical experience evaluation per OAR 918-098-1030.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0090, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1065

### B-level Structural Plans Examiners Minimum Experience, Education and Training Requirements

(1) Only applicants who qualify to apply for an Oregon Code Certification under OAR 918-098-1040 for an Oregon B-level structural plans examiner certification may apply on a division-approved form and shall demonstrate compliance with one of the following minimum experience, education or training requirements:

(a) Oregon registration as an architect or certified professional engineer; or

(b) A Bachelor or Master degree in architecture or civil or structural engineering and 1 year of diversified experience designing, constructing or inspecting A-level or B-level structures; or

(c) 3 years of diversified experience designing A-level or B-level structures; or

(d) 3 years of diversified experience as a plans examiner in another jurisdiction reviewing A-level or B-level structures for compliance with a recognized code for building construction; or

(e) Certification as a B-level structural inspector and:

(A) 1 year of diversified experience performing structural inspections on B-level structures; and

(B) Completion of a B-level structural plans examiner in-training program; or

(f) Certification as a fire and life safety plans examiner and:

(A) 1 year of experience reviewing plans for compliance with fire and life safety requirements; and

(B) Completion of a B-level structural plans examiner in-training program; or

(g) Certification as a residential structural plans examiner or structural inspector and:

(A) 2 years of experience performing structural inspections or plan reviews on dwellings; and

(B) Completion of a B-level structural plans examiner in-training program; or

(h) Completion of a division-approved education program in building inspection technology covering the Oregon Structural Specialty Code or the model code on which it is based; or

(i) Any combination of education, training or diversified experience listed in subsections (b) through (h) of this section totaling 3 years.

(2) Persons certified by a nationally recognized certification body to perform structural plan reviews on A-level or B-level structures according to a recognized code for building construction shall be granted 1 year of credit toward the experience requirements listed in section(1) of this rule. This section does not apply to persons who have completed an in-training or cross-training program or a practical experience evaluation per OAR 918-098-1030

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0100, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1070

### B-level Structural Inspectors Minimum Experience, Education and Training Requirements

(1) Only applicants who qualify to apply for an Oregon Code Certification under OAR 918-098-1040 may apply for an Oregon B-level structural inspector certification may apply on a division-approved form and shall demonstrate compliance with one of the following minimum experience, education and training requirements:

(a) Oregon registration as an architect or certified professional engineer; or

(b) A Bachelor or Master degree in architecture or civil or structural engineering and 1 year of diversified experience designing, constructing or inspecting A-level or B-level structures; or

(c) 3 years of diversified experience designing or constructing A-level or B-level structures; or

(d) 3 years of experience as an inspector in another jurisdiction inspecting A-level or B-level structures, including 2 years of diversified experience inspecting structures for compliance with a recognized code for building construction; or

(e) Completion of a division-approved education program in building inspection technology covering the Oregon Structural Specialty Code or the model code on which it is based; or

(f) Certification as a fire and life safety plans examiner and:

(A) 1 year of experience reviewing plans for compliance with fire and life safety requirements; and

(B) Completion of a B-level structural inspector in-training program; or

(g) Certification as a residential plans examiner or structural inspector and:

(A) 1 year of experience performing structural inspections or plan reviews on dwellings; and

(B) Completion of a B-level structural inspector in-training program.

(h) Any combination of education, training or diversified experience listed in subsections (b) through (g) of this section totaling 3 years.

(2) Persons certified by a nationally recognized certification body to perform structural inspections or plan review on A-level or B-level structures according to a recognized code for building construction shall be granted 1 year of credit toward the experience requirements listed in section(1) of this rule. This section does not apply to persons who have completed an in-training or cross-training program or a practical experience evaluation per OAR 918-098-1030.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0110; Renumbered from 918-098-0110, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05



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## 918-098-1075

### A-level Mechanical Inspectors Minimum Experience, Education and Training Requirements

(1) Only applicants who qualify to apply for an Oregon Code Certification under OAR 918-098-1040 may apply for an Oregon A-level mechanical inspector certification on a division-approved form and shall demonstrate compliance with one of the following minimum experience, education or training requirements:

(a) Oregon registration as an architect or certified professional engineer; or

(b) A Bachelor or Master degree in engineering and 2 years of experience designing, installing or inspecting heating, ventilation, air conditioning and cooling systems; or

(c) 4 years experience designing or constructing heating, ventilation, air conditioning and cooling systems; or

(d) 4 years experience as an inspector in another jurisdiction inspecting A-level structures, including 2 years of experience inspecting heating, ventilation, air conditioning and cooling systems for compliance with a recognized code for mechanical installations; or

(e) Completion of a division-approved education and training program in building inspection technology covering the Mechanical Specialty Code or the model code on which it is based and 2 years of experience inspecting, designing or installing heating, ventilating or air conditioning systems;

(f) Certification as a B-level mechanical inspector and:

(A) 1 year of experience inspecting mechanical installations in B-level structures; and

(B) Completion of an A-level mechanical inspector in-training program; or

(g) Certification as a one and two family dwelling mechanical inspector and:

(A) 2 years of experience inspecting mechanical installations in dwellings; and

(B) Completion of an A-level mechanical inspector in-training program; or

(h) Any combination of education, training or experience listed in subsections (b) through (g) of this section totaling 4 years ; or

(i) Oregon certified as an A-level plumbing inspector who has held an Oregon journeyman plumber certificate of competency for a minimum of three years and completion of a division-approved A-level mechanical training program ; or

(j) Oregon certified as an A-level plumbing inspector, who has held an Oregon journeyman plumber certificate of competency for a minimum of three years and completion of a division-approved practical experience evaluation.

(2) Persons certified by a nationally recognized certification body to perform mechanical inspections according to a recognized code for mechanical installations shall be granted 1 year of credit toward the experience requirements listed in section(1) of this rule. This section does not apply to persons who have completed an in-training or cross-training program or a practical experience evaluation per OAR 918-098-1030

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 7-1998, f. 3-31-98, cert. ef. 4-1-98; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0120, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1080

### Refrigeration Inspector Certification

(1) All persons engaged in the inspection of brazing or welding related to the installation, alteration or repair of refrigeration piping systems, except as regulated by the Oregon Boiler and Pressure Vessel Program under OAR chapter 918, division 225, shall:

(a) Possess a current and valid commercial or A- or B-level Mechanical Inspector Certification issued under OAR 918-098-1075 or 918-098-1085 or a valid Oregon Inspector Certification and a current Commercial Mechanical Inspector Certification issued by ICC and

(b) Successfully complete a training program in accordance with either Section IX, "Welding and Brazing Qualification" of the ASME Boiler and Pressure Vessel Code, or AWS B2.2, "Standard for Brazing Procedure and Performance Qualification" issued by a division-approved organization.

(2) Inspector certification for refrigeration piping in residential structures is not required.

[Publications referenced are available for review at the division.]

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 2-2001, f. 2-2-01, cert. ef. 7-1-01; Renumbered from 918-098-0900, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1085

### B-level Mechanical Inspectors Minimum Experience, Education and Training Requirements

(1) Only applicants who qualify to apply for an Oregon Code Certification under OAR 918-098-1040 for an Oregon B-level mechanical inspector certification on a division-approved form and shall demonstrate compliance with one of the following minimum experience, education or training requirements:

(a) Oregon registration as an architect or certified professional engineer; or

(b) A Bachelor or Master degree in engineering and 1 year of experience in designing, installing or inspecting heating, ventilation, air conditioning and cooling systems; or

(c) 3 years of experience designing or installing heating, ventilation, air conditioning and cooling systems; or

(d) 3 years of experience as an inspector in another jurisdiction inspecting A-level or B-level structures, including 2 years of experience inspecting heating, ventilation, air conditioning and cooling systems for compliance with a recognized code for mechanical installations; or

(e) Completion of a division-approved education program in building inspection technology covering the Mechanical Specialty Code or the model code on which it is based; or

(f) Certification as a residential mechanical inspector and:

(A) 1 year of experience inspecting heating, ventilation, air conditioning and cooling systems in dwellings; and

(B) Completion of a B-level mechanical inspector in-training program; or

(g) Any combination of education, training or diversified experience listed in subsections (b) through (f) of this section totaling 3 years.

(2) Persons certified by a nationally recognized certification body to inspect mechanical equipment installed in A-level or B-level structures according to a recognized code for mechanical installations shall be granted 1 year of credit toward the experience requirements, except as listed in section (3) of this rule and cross-training or in-training programs, listed in subsections (1)(b) through (e) or (g) of this rule.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0130, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1200

### Residential Building Inspectors Experience, Education and Training Requirements

(1) Only applicants who qualify to apply for an Oregon Code Certification under OAR 918-098-1040 may apply for a Oregon residential building inspector certification on a division-approved form and shall demonstrate compliance with at least one of the following minimum experience, education or training requirements:

(a) A current division certification as an A-level or B-level structural plans examiner or inspector; or

(b) 3 years of experience designing or constructing dwellings or A-level or B-level structures; or

(c) 2 years of experience as a structural inspector in another jurisdiction inspecting dwellings or A-level or B-level structures for compliance with a recognized code for building construction; or

(d) 90 quarter hours or 60 semester hours of education and training in engineering or architectural design of structures through college or community college; or

(e) Completion of a division-approved education program in building inspection technology covering the Oregon Residential Specialty Code structural provisions or the model code on which it is based; or

(f) Completion of a division-approved in-training program for residential building inspectors; or

(g) Current division certification as a residential building inspector under one or more provisions of the Oregon Residential Specialty Code and:

(A) 1 year of experience administering and enforcing another provision of the **Oregon Residential Specialty Code**; and

(B) Confirmation by the building official of the jurisdiction that employs the applicant that the applicant has completed a residential building inspector cross-training program that meets the minimum requirements established by the division; or

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(h) Any combination of education, training or experience listed in subsections (b) through (e) of this section designing, constructing or inspecting dwellings or A-level or B-level structures totaling 3 years.

(2) Persons certified by a nationally recognized certification body to perform structural plan reviews or structural inspections on A-level or B-level structures or dwellings according to a recognized code for building construction shall be granted 1 year of credit toward the experience requirements, except as listed in section (3) of this rule and cross-training or in-training programs, listed in subsections (1)(b) through (e) of this rule.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01;

Renumbered from 918-098-0200, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1205

### Oregon Residential Mechanical Inspectors Experience, Education and Training Requirements

(1) Only applicants who qualify to apply for an Oregon Code Certification under OAR 918-098-1040 may apply for an Oregon residential mechanical inspector certification on a division-approved form and must demonstrate compliance with at least one of the following minimum experience, education or training requirements:

(a) A current division certification as an A-level or B-level mechanical inspector;

(b) 3 years of experience in engineering design or installation of heating, ventilation, air conditioning and cooling systems; or

(c) 2 years of experience as a mechanical inspector in another jurisdiction inspecting dwellings or A-level or B-level structures for compliance with a recognized code for mechanical installations; or

(d) 90 quarter hours or 60 semester hours education and training in engineering design and installing heating, ventilation, air conditioning and cooling systems; or

(e) Completion of a division-approved education program in building inspection technology covering the Oregon Residential Specialty Code mechanical provisions or the model code on which it is based; or

(f) Completion of an approved in-training program for residential mechanical inspectors; or

(g) Current division certification as a certification residential inspector under one or more provisions of the Oregon Residential Specialty Code and:

(A) 1 year of experience administering and enforcing another provision of the Oregon Residential Specialty Code; and

(B) Confirmation by the building official of the jurisdiction that employs the applicant that the applicant has completed a residential mechanical inspector cross-training program that meets the minimum requirements established by the division; or

(h) Any combination of education, training or experience listed in subsections (b) through (e) of this section in engineering design, installation or inspection of heating, ventilation, air conditioning and cooling systems totaling 3 years.

(2) Persons certified by a nationally recognized certification body to inspect heating, ventilation, air conditioning and cooling systems in A-level or B-level structures or dwellings according to a recognized code in mechanical installations shall be granted 1 year of credit toward the experience requirements, except as listed in section (3) of this rule and cross-training or in-training programs, listed in subsections (1)(b) through (e) of this rule.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01;

Renumbered from 918-098-0210, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1210

### Residential Plumbing Inspectors

(1) A person possessing a "One and Two Family Dwelling Plumbing Inspector" certification prior to July 1, 2005, shall be considered a "Residential Plumbing Inspector" for the purpose of these rules.

(2) A residential plumbing inspector may conduct inspections for:

(a) Plumbing work regulated by the **Oregon Residential Specialty Code**, except for apartment buildings; and where connection to the building is not a separate plumbing system.

(b) Plumbing work on manufactured dwelling alterations and manufactured structure accessory buildings and structures under the **Oregon Manufactured Dwelling and Park Specialty Code**.

(3) To perform work as a residential plumbing inspector, individuals must demonstrate compliance with at least one of the following minimum experience, education or training requirements:

(a) A current division certification as an Oregon Plumbing Specialty Code inspector; or

(b) Experience designing or installing plumbing systems as a journeyman plumber or its equivalent; or

(c) 2 years of experience as a plumbing inspector in another jurisdiction inspecting plumbing systems in commercial or residential structures for compliance with a recognized code for plumbing installations; or

(d) 90 quarter hours or 60 semester hours education and training in mechanical engineering which includes designing and installing plumbing systems through a college or community college; or

(e) Current division certification as a one and two family dwelling or residential inspector under one or more provisions of the **Oregon Residential Specialty Code** and:

(A) 1 year of experience administering and enforcing another provision of the **Oregon Residential Specialty Code**; and

(B) Confirmation by the building official of the jurisdiction that employs the applicant that the applicant has completed a one and two family dwelling or residential plumbing inspector cross-training program that meets the minimum requirements established by the division; or

(f) Any combination of experience designing, installing or inspecting plumbing systems listed in subsections (a) through (d) of this section totaling 3 years.

(4) Persons certified by a nationally recognized certification body to inspect plumbing systems in commercial or residential structures according to a recognized code in plumbing installations shall be granted 1 year of credit toward the experience requirements, except cross-training and in-training, listed in subsections (1)(b) and (c) of this rule.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.622

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01;

Renumbered from 918-098-0220, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1215

### Residential Electrical Inspectors

(1) A person possessing a "One and Two Family Dwelling Electrical Inspector" certification prior to July 1, 2005, shall be considered a "Residential Electrical Inspector" for the purpose of these rules.

(2) Residential electrical inspectors may conduct inspections for:

(a) Electrical work regulated by the **Oregon Residential Specialty Code**, excluding for apartment buildings; and

(b) Electrical work on manufactured dwelling alterations and manufactured structure accessory buildings and structures under the **Oregon Manufactured Dwelling and Park Specialty Code**.

(3) To perform work as a residential electrical inspector, individuals must demonstrate compliance with at least one of the following minimum experience, education or training requirements:

(a) A current division certification as an Oregon Electrical Specialty Code inspector; or

(b) Experience designing or installing electrical systems as a general journeyman electrician or limited residential journeyman electrician or their respective equivalents; or

(c) 2 years of experience as an electrical inspector in another jurisdiction inspecting electrical installations in commercial or residential structures for compliance with a recognized code for electrical installations; or

(d) 90 quarter hours or 60 semester hours education and training in electrical engineering which includes designing and installing electrical systems through a college or community college; or

(e) Current division certification as a one and two family dwelling or residential inspector under one or more provisions of the **Oregon Residential Specialty Code** and:

(A) 1 year of experience administering and enforcing another provision of the **Oregon Residential Specialty Code**; and

(B) Confirmation by the building official of the jurisdiction that employs the applicant that the applicant has completed a one and two family dwelling or residential electrical inspector cross-training program that meets the minimum requirements established by the division; or

(f) Any combination of experience or education listed in subsections (a) through (d) of this section designing, installing or inspecting electrical systems totaling 3 years.

(4) Persons certified by a nationally recognized certification body to inspect electrical installations in commercial or residential structures according to a recognized code in electrical installations shall be granted 1

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year of credit toward the experience requirements, except cross-training and in-training, listed in subsections (1)(b) and (c) of this rule.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 455.720  
Stats. Implemented: ORS 455.622  
Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0230, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1220

### Oregon Residential Structural Plans Examiners Minimum Experience, Education and Training Requirements

(1) Only applicants who qualify to apply for an Oregon Code Certification under OAR 918-098-1040 may apply for a Oregon residential structural plans examiner certification on a division-approved form and must demonstrate compliance with at least one of the following minimum experience, education or training requirements:

- (a) Oregon registration as an architect or certified professional engineer; or
- (b) A current division certification as an A-level or B-level structural plans examiner; or
- (c) 3 years of experience designing or constructing structures or dwellings; or
- (d) 2 years of experience as a structural plans examiner in another jurisdiction reviewing plans for compliance with a recognized code for building construction; or
- (e) 90 quarter hours or 60 semester hours education and training in building design or construction through a college or community college; or
- (f) Completion of a division-approved education program in building inspection technology covering the **Oregon Residential Specialty Code** structural provisions or the model code on which it is based; or
- (g) Completion of an approved in-training program for residential structural plans examiners; or
- (h) Current division certification as a residential inspector under one or more provisions of the **Oregon Residential Specialty Code**; and

(A) 1 year of experience administering and enforcing another provision of the **Oregon Residential Specialty Code**; and

(B) Confirmation by the building official of the jurisdiction that employs the applicant that the applicant has completed a residential structural plans examiner cross-training program that meets the minimum requirements established by the division; or

(i) Any combination of experience and education listed in subsections (a) through (f) of this section designing, constructing or inspecting structures or dwellings totaling 3 years.

(2) Persons certified by a nationally recognized certification body to perform structural plan reviews or conduct on-site inspections on structures or dwellings according to a recognized code for building construction shall be granted 1 year of credit toward the experience requirements, except as listed in section (3) of this rule and cross-training or in-training programs, listed in subsections (1)(c) and (d) of this rule.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 455.720  
Stats. Implemented: ORS 455.622  
Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCA 16-1992, f. & cert. ef. 8-11-92; BCD 23-1996(Temp), f. & cert. ef. 10-21-96; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0120; BCD 7-1998, f. 3-31-98, cert. ef. 4-1-98; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0240, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1300

### Certifications Related to Manufactured Structures and Parks References and Undertakings.

(1) Scope. The rules in OAR 918-098-1300 to 918-098-1330 relate to certifications for inspectors and plans examiners dealing with manufactured dwellings, recreational vehicles, manufactured dwelling parks, organizational camps, recreation parks and picnic parks.

(2) Hiring Non-Certified Persons. The division or a jurisdiction may employ a person not meeting the minimum requirements of OAR 918-098-1305 through 918-098-1320 while the person is being trained or waiting to qualify to take the division examination. During this period the person may only perform inspections or plan reviews under the direct supervision of the trainer. Training must be provided by an inspector or plans examiner having a minimum of three years experience in the same certification or a person approved by the board. This rule does not waive the requirements of ORS 455.730 or permit the division or jurisdiction to hire or use persons whose certifications have lapsed or been revoked.

(3) Inspectors and plans examiners of prefabricated structures do not require special certifications but shall have the appropriate certifications required for performing inspections or plan reviews under the specific specialty code being used.

(4) The following definitions apply to OAR 918-098-1300 through 918-098-1330 only. Also, see applicable definitions in OAR 918-098-1005:

(a) "Board" means the Manufactured Structures and Parks Advisory Board.

(b) "Building Construction," relating to experience qualifications, means site-built construction, prefabricated construction or manufactured structure construction.

(c) "One Year," relating to experience qualifications, means 1 year of work experience, 45 or more credit hours of schooling in the quarter system or 30 or more credit hours of schooling in the semester system.

Stat. Auth.: ORS 446.250 & 455.720  
Stats. Implemented: ORS 446.250 & 455.720  
Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0130; Renumbered from 918-098-0300, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1305

### Manufactured Structure Installation Inspector Certification

(1) Scope of Activities and Authority.

(a) A manufactured structure installation inspector conducts on-site field inspections of manufactured dwelling or park trailer installations including site preparation, setbacks, drainage, stand, foundation support, earthquake bracing systems, tie-downs, under-floor enclosures, access, egress, plumbing utility connections (within 30 lineal feet of the manufactured dwelling), mechanical connections and electrical feeder assembly connections (as defined by Article 550 of the National Electrical Code), electrical fixture connections and plumbing, mechanical and electrical crossover connections for manufactured structures under ORS 446.230 and 446.240;

(b) This certification does not include inspections or plan reviews of manufactured dwelling alterations or manufactured structure accessory structures and accessory buildings. See OAR 918-098-1325 and 918-098-1330 for certification requirements.

(c) This certification can be used only in a jurisdiction that:

(A) Meets all of the requirements of this rule, OAR 918-500-0055 and 918-500-0065;

(B) Complies with ORS 446.250 and 446.253(2) relating to the delegation of full responsibility for permit issuance and inspections;

(C) Issues permits according to ORS 446.253; and

(D) Enforces the current edition of the Oregon Manufactured Dwelling and Park Specialty Code and all referenced standards contained therein.

(2) Procedure for Qualification. An applicant for certification under this rule shall meet the general qualifications in section (3) of this rule, make application, pay the required fees, attend a division-approved training program and pass a division-approved examination.

(3) Experience, Education and Training Requirements. An applicant must have at least one of the following:

(a) 2 years of experience as a supervisor in the building construction industry; or

(b) 2 years of experience in design work related to building construction; or

(c) Be a division-certified building inspector or plans examiner; or

(d) 2 years of experience as a quality assurance inspector in a manufactured structure manufacturing plant; or

(e) 2 years of experience as an Oregon licensed manufactured dwelling installer; or

(f) An associate degree or equal from a division-approved education program in a construction-related field; or

(g) Any combination of the experience and education listed in subsections (a) through (f) of this section equaling at least 2 years of; or

(h) A one-year certificate of completion in building inspection technology from a division-approved education program and completion of a 180-hour division-approved inspector in-training program under the supervision of a person with a minimum of three years experience as a certified manufactured structure installation inspector or a person approved by the board.

(4) Inspector Training and Examination. An applicant must successfully complete a division-approved manufactured structure installation inspector training program and pass a division-approved examination covering:

(a) The Oregon Manufactured Dwelling and Park Specialty Code and those standards referenced therein;

(b) ORS 446.003, 446.155 to 446.253, and 446.395 to 446.420; and

(c) OAR chapter 918, divisions 500, 515, 520, 530.

(5) Revocation. The division is authorized to revoke this certification under ORS 446.255. Persons certified under this rule who fail to meet the



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minimum continuing education requirements shall be subject to revocation. If the minimum continuing education is met within 60 days from the date it was originally due, the division shall discontinue any pending revocation action based on a failure to meet minimum continuing education requirements.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 446.250 & 455.720  
Stats. Implemented: ORS 446.250 & 455.720  
Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97;  
Renumbered from 918-099-0135; Renumbered from 918-098-0310, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1310

### Recreational Vehicle Inspector Certification

(1) Scope of Activities and Authority. A recreational vehicle inspector conducts field, dealer lot, repair operation, alteration, visual and manufacturing plant inspections, reviews plans and provides other technical services for recreational vehicle manufacturers, dealers and owners in accordance with ORS 446.185 and 446.160(1).

(2) Procedure for Qualification. An applicant for certification under this rule shall meet the general qualifications in section (3) of this rule, make application, pay the required fees and pass a division-approved examination.

(3) Experience, Education and Training Requirements. An applicant for certification as a recreational vehicle inspector must have at least one of the following:

(a) 2 years of experience as a supervisor in the building construction industry; or

(b) 2 years of experience in design work related to building construction; or

(c) 2 years of experience as a certified building inspector or plans examiner; or

(d) 2 years of experience as a quality assurance inspector in a manufactured structure plant; or

(e) 2 years of experience as a division-certified recreational vehicle quality assurance technician; or

(f) 2 years of code-related experience as a recreational vehicle technician; or

(g) An associate degree or equal from a division-approved education program in a construction-related field; or

(h) Any combination of the experience and education listed in subsections (a) through (g) of this section equaling at least 2 years; or

(i) A one-year certificate of completion in building inspection technology from a division-approved education program and completion of an 800-hour division-approved inspector in-training program under the supervision of a person with a minimum of three years experience as a certified recreational vehicle inspector or a person approved by the board.

(4) Inspector Examination. An applicant for certification as a recreational vehicle inspector must pass a division-approved examination covering the following:

(a) American National Standards Institute (ANSI) A119.2 (1999 Edition);

(b) American National Standards Institute (ANSI) A119.5 (1998 Edition);

(c) **National Electrical Code (NFPA) 70 (1999 Edition)**;

(d) ORS 446.003 and 446.155 to 446.253; and

(e) OAR chapter 918, divisions 525, 530, 535 and 540.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97;  
Renumbered from 918-099-0140; Renumbered from 918-098-0320, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1315

### Manufactured Structure Construction Inspector Certification

(1) Scope of Activities and Authority. A manufactured structure construction inspector conducts field, dealer lot, consumer assistance, alteration, visual and manufacturing plant inspections, reviews plans and provides technical services for manufactured dwelling manufacturers, dealers and owners.

(2) Procedure for Qualification. An applicant for this certification shall meet the general qualifications in section (3) of this rule, make application, pay the required fees and pass a division-approved examination.

(3) Experience, Education and Training Requirements. An applicant for certification as a manufactured structure construction inspector must have at least one of the following:

(a) 2 years of experience as a supervisor in the building construction industry; or

(b) 2 years of experience in design work related to building construction; or

(c) 2 years of experience as a certified building inspector or plans examiner; or

(d) 2 years of experience as a quality control inspector in a manufactured structures plant; or

(e) An associate degree or equal from a division-approved education program in a construction-related field; or

(f) Any combination of the experience and education listed in subsections (a) through (e) of this section equaling at least two years; or

(g) A one-year certificate of completion in building inspection technology from a division-approved education program and completion of an 800-hour division-approved inspector in-training program under the supervision of a person with a minimum of three years experience as a certified manufactured structure construction inspector or a person approved by the board.

(4) Inspector Examination. An applicant for certification as a manufactured structure construction inspector must pass a division-approved examination covering:

(a) **Oregon Manufactured Dwelling and Park Specialty Code**;

(b) **National Electrical Code (NFPA) 70 (1993 Edition)**;

(c) **Manufactured Home Construction and Safety Standards Act**;

(d) **Public Law 93-383, Title VI**;

(e) **ORS 446.003 and 446.155 to 446.253**;

(f) **OAR chapter 918, divisions 500 and 520**; and

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

Stat. Auth.: ORS 446.250 & 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97;  
Renumbered from 918-099-0145; Renumbered from 918-098-0330, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1320

### Park and Camp Inspector Certification

(1) Scope of Activities and Authority.

(a) A park and camp inspector conducts field inspections, reviews plans and provides other technical services for manufactured dwelling parks, recreational parks, organizational camps and picnic parks under ORS 446.066 and 446.335.

(b) This certification can be used only in a jurisdiction that:

(A) Meets all of the requirements of this rule;

(B) Complies with ORS 446.430, 455.170 and 455.680 relating to the delegation of full responsibility for permit issuance and inspections; and

(C) Issues permits, enforces the current edition of ORS Chapter 446, OAR chapter 918, divisions 600 and 650 and all referenced standards contained therein.

(2) Procedure for Qualification. An applicant for certification under this rule shall meet the general qualifications in section (3) of this rule, make application, pay the required fees and pass a division-approved examination.

(3) Experience, Education and Training Requirements. An applicant for certification as a park and camp inspector must have at least one of the following:

(a) 2 years of experience as a supervisor in the building or road construction industry; or

(b) 2 years of experience in design work related to building or road construction; or

(c) 2 years of experience as a road construction inspector; or

(d) 2 years of experience as a surveyor or landscape architect; or

(e) 2 years of experience as a registered sanitarian; or

(f) 2 years of experience as an Oregon licensed manufactured dwelling installer; or

(g) A division certification as a building inspector or plans examiner; or

(h) An associate degree or equal from a division-approved education program in a construction-related field; or

(i) Any combination of the experience and education listed in subsection (a) through (h) of this section equaling 2 years; or

(j) A one-year certificate of completion in building inspection technology from a division-approved education program and completion of a 180-hour division-approved inspector in-training program under the supervision of a person with a minimum of three years experience as a certified park and camp inspector or a person approved by the board.

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(4) Inspector Examination. An applicant for certification under this rule must pass a division-approved park and camp inspector certification examination covering:

(a) ORS 446.003 to 446.140, 446.310 to 446.350, 446.430, 455.170, and 455.680;

(b) OAR chapter 918, divisions 535, 600 and 650; and

(c) **Oregon Manufactured Dwelling and Park Specialty Code, Chapters 1, 2, 9, and 10.**

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0150; Renumbered from 918-098-0340, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1325

### Requirements for Alteration Inspection and Plan Review of Manufactured Dwellings

(1) Scope of Work. Manufactured dwelling alteration inspections and plan reviews include on-site field inspections of alterations including structural, fire and life safety, electrical, plumbing and mechanical alterations made to manufactured dwellings after the initial sale of the home to the first consumer after all the terms of the sales contract have been met. Most alteration inspections made prior to this time are the responsibility of the division and shall be performed by a certified manufactured structure construction inspector. All alteration inspections made to recreational vehicles and park trailers are the responsibility of the division and shall be performed by a certified recreational vehicle inspector.

(2) Certifications. Inspectors of manufactured dwelling alterations are required to be certified by ORS 446.250. The division requires that persons performing inspections or plan reviews on manufactured dwelling alterations have the appropriate certifications under OAR 918-098-1200 to 918-098-1220 for the Oregon Residential Specialty Code for the specific discipline being used or an Oregon Inspector Certification and the appropriate ICC Residential Certification as described in OAR 918-098-1010(4)(e) or (f). This requirement is not applicable to alteration inspections performed on manufactured homes still under the jurisdiction of the U.S. Department of Housing and Urban Development (HUD), recreational vehicles or park trailers.

(3) Authority. Inspectors and plans examiners of manufactured dwelling alterations may only inspect or review plans in a jurisdiction that has been delegated the manufactured dwelling alteration program and that:

(a) Complies with ORS 446.250 and 446.253(2) relating to the delegation of full responsibility for permit issuance and inspections;

(b) Issues permits and enforces the current edition of ORS Chapter 446 and OAR chapter 918, divisions 500 and 520;

(c) Meets the requirements of OAR 918-500-0055 for delegation; and

(d) Enforces the current edition of the **Oregon Manufactured Dwelling and Park Specialty Code** and all referenced standards contained therein.

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

Stat. Auth.: ORS 446.250 & 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-098-0350, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1330

### Manufactured Structure Accessory Structure or Accessory Building Inspection

(1) Scope of Work. Manufactured structure accessory structure or accessory building inspections and plan reviews include on-site field inspections of installations of manufactured structure accessory structures and accessory buildings (i.e., carports, ramadas, cabanas, garages, storage sheds, awnings, decks, steps and ramps).

(2) Certifications. Inspectors of manufactured structure accessory structures and accessory buildings are required to be certified by ORS 446.250. To satisfy this mandate, the division requires that persons performing inspections or plan reviews on manufactured structure accessory structures or accessory buildings have the appropriate certifications under OAR 918-098-1200 to 918-098-1220 or an OIC and the appropriate ICC Residential Certification as described in OAR 918-098-1010(4)(e) and (f) for the Oregon Residential Specialty Code for the specific discipline being used

(3) Authority. Inspectors of manufactured structure accessory structures and accessory buildings may only inspect or review plans in a jurisdiction that has been delegated the manufactured dwelling accessory structure and accessory building program and that:

(a) Complies with ORS 446.250 and 446.253(2) relating to the delegation of full responsibility for permit issuance and inspections;

(b) Complies with the **Oregon Manufactured Dwelling and Park Specialty Code** and all referenced standards contained therein;

(c) Issues permits and enforces the current edition of ORS Chapter 446 and OAR chapter 918, division 500;

(d) Meets the requirements of OAR 918-500-0055 for delegation; and

(e) Enforces of the current edition of the **Oregon Manufactured Dwelling and Park Specialty Code** and all referenced standards contained therein.

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

Stat. Auth.: ORS 446.250 & 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-098-0360, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1400

### In-Training Programs

(1) Building inspection programs that have a division-approved in-training program may continue the program for trainees who enrolled in the program prior to July 1, 2005.

(2) When in-training programs are modified, copies of changes must be filed with the trainee's records. In-training programs shall be amended to include all applicable code-changes. In-training program amendments shall be submitted to the division for review and approval.

(3) A program shall be a minimum of six months and a maximum of two years unless a longer period is specifically approved by the division.

(4) The in-training program supervisor shall maintain records of all trainees who participate in inspector or plans examiner in-training programs.

(5) The division may monitor inspector and plans examiner in-training programs to verify that classroom and field in-training activities cover the minimum education and training requirements established by the division for inspectors and plans examiners.

(6) Trainees performing inspections as part of an in-training program must be accompanied at all times by an inspector certified to conduct the inspection being performed. Plans reviewed by plans examiners as part of an in-training program must also be reviewed by a similarly certified plans examiner.

(7) Upon completion of an approved inspector in-training program, applicants for certification shall be evaluated by two or more persons with at least two years inspection or plan review experience who hold the same or higher certification in the same discipline for which the person has applied for certification. Evaluators shall not be employed by the municipality that either employs the applicant or has provided any portion of the applicant's training or education. Evaluations shall include all training objectives described in the division-approved in-training programs.

(8) Certification programs described in OAR 918-098-0320 and 918-098-0330 administered only by the division may have in-training evaluations performed by division employees having no apparent conflict of interest.

(9) The results of the trainee evaluation and recommendation shall be reported to the division by the evaluation team.

Stat. Auth.: ORS 455.725

Stats. Implemented: ORS 455.725

Hist.: BCA 16-1992, f. & cert. ef. 8-11-92; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0510; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; Renumbered from 918-098-0400, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1410

### Cross-Training Programs for Residential Certifications

(1) Every building inspection program that elects to administer, use or participate in a cross-training program for residential plans examiners or inspectors shall submit the following information to the division:

(a) The name and certification of the cross-training program supervisor;

(b) The names and certifications of persons who will provide cross-training;

(c) A description or copy of classroom and field training activities covering the **Oregon Residential Specialty Code** or model code on which it is based for residential plans examiners and inspectors; and

(d) The method of evaluating whether a trainee has satisfactorily completed the cross-training program.

(2) The cross-training program supervisor (a) Possess an A-level or commercial certification or an Oregon Inspector certification with the appropriate ICC certification in the program area the individual is responsible for supervising; and

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(b) Shall maintain records of all trainees who participate in the residential plans examiner or inspector cross-training program.

(3) The division may monitor residential cross-training programs.

(4) Trainees performing inspections or plan reviews as part of a cross-training program must be accompanied at all times by an individual certified to conduct the inspection or plan review being performed.

(5) A municipality may enroll its trainees in a program sponsored by another jurisdiction or provided by a private entity or school.

(6) Cross-training programs shall be amended to include all applicable code-changes when these changes become effective, and filed with the trainee records at the local jurisdiction.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0410, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1420

### Education Program Requirements

(1) Educational institutes may submit a written application to the division for approval of their education program.

(2) Programs shall be resubmitted for review and approval every three years following initial approval.

(3) Class room and laboratory instructors shall possess an appropriate inspector certification for the specialty code area being taught.

(4) All class room and laboratory instruction shall be based on the specialty codes adopted by the division or the corresponding nationally recognized model codes.

(5) All classes shall be updated with the most recent adopted code-changes. Program amendments shall be submitted to the division for review and approval.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-098-0420, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1430

### Timeline for Education Program Approval

(1) To be approved for a school year beginning in September, new education programs shall be submitted to the division by June 1 of the prior year for review.

(2) The division shall request any needed additional information by July 1.

(3) The education institution shall submit requested information by August 1.

(4) The division shall issue program approval or disapproval by October 1 for programs for the following calendar year.

(5) Updated programs based on new code adoptions or code-changes shall be submitted to the division for approval within 30 days of the effective date of the code adoption or code-change.

(6) Education programs submitted for the three-year review and re-approval shall follow the timeline in this rule.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; Renumbered from 918-098-0425, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1440

### Approval of Inspector In-Training, Continuing Education and Educational Programs

(1) Applications for approval of in-training and continuing education and educational programs must be filed at least 45 days prior to the date of the proposed class or beginning date of training. The 45-day period or any other procedural rule controlling these programs may be waived if the administrator determines there is an emergency.

(2) The application must describe the course objectives, qualifications for entry into the course, course content, materials to be used, length of class, field time if applicable, and instructor names and qualifications.

(3) Where continuing education credits are sought, the application shall show the number of credits sought for the course and provide justification.

(4) Instructors approved by the division to teach code-change courses shall be granted the same number of continuing education credit hours as those attending the course.

(5) Persons or organizations requesting reimbursement from the division training funds for education programs shall have a valid contract with the division or specific written approval from the division at the time of course offering.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCA 16-1992, f. & cert. ef. 8-11-92; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0500; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; Renumbered from 918-098-0430, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1450

### Continuing Education Requirements

(1) Person holding an Oregon Code Certification, other than an electrical inspector or plumbing inspector issued pursuant to OAR 918-281-0020 or 918-695-0400, or an Oregon Inspector Certification is required to obtain at least 16 hours of division-approved continuing education related to their duties every three years from the date of issuance and every three years thereafter for each certification held. At least 8 of these hours must be code-change related to the scope of work allowed under the certification.

(2) Building officials shall be required to obtain six hours continuing education credits each year in classes related to the duties of a building official. In calendar years when the legislature meets in regular session, the classes must also include at least one division-approved class covering new legislation relating to the administration and enforcement of building inspection programs.

(3) A person who takes an approved continuing education class and holds more than one Oregon Certification may apply the course to one or more appropriate certifications.

(4) In addition to the continuing education hours above, the division may require building officials, inspectors, and plans examiners to take high priority training when the division identifies new technologies or specific problem areas.

(5) The division may periodically verify that a person is maintaining and recording their continuing education.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1460

### Extension of Continuing Education Information

The administrator may extend the period to comply with code-change continuing education requirements in case of hardship or illness. Requests for extension shall:

(1) Be in writing;

(2) Describe the nature of the hardship or illness and the reason why the applicant is unable to comply with the continuing education requirements; and

(3) State when the person will be able to complete the continuing education requirements.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCA 16-1992, f. & cert. ef. 8-11-92; BCA 33-1993, f. & cert. ef. 12-14-93; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0630; Renumbered from 918-098-0470, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1470

### Duties and Responsibilities of Certified Building Officials, Inspectors, and Plans Examiners

(1) Persons who hold an Oregon Inspector Certification or an Oregon Code Certification must act in the public interest in performing their duties as a building official, inspector, or plans examiner, including but not limited to:

(a) Obtaining and maintaining any appropriate national or Oregon Code Certification prior to performing their duties;

(b) Completing all required continuing education requirements and maintaining records of completion of continuing education courses required for each national and Oregon certification sufficient to demonstrate compliance with OAR 918-098-1450.

(c) Enforcing all appropriate building code statutes, and rules adopted thereunder, including but not limited to specialty codes, including statewide code interpretations, directives or other building program requirements and allowing the use of alternate method rulings.

(d) Adhering to all applicable building code statutes and rules adopted thereunder.

(e) Notifying the division of any changes of name or address in a manner prescribed by the division within 10 business days.

(2) After a code or code edition is adopted by the division, persons who hold an Oregon Inspector Certificate and holds the national certification for that specialty code must re-certify their national certification to the new code or code edition at the next available renewal cycle of the national certification. If an inspector re-certifies a national certificate to the newest edition of the national code(s) before that code edition is adopted in



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Oregon, such re-certification shall be considered as a current national certification for the purposes of these rules.

(3) If an inspector fails to maintain or does not possess a current national certification, the inspector shall not perform inspections or plan review for that particular specialty code.

Stat. Auth.: ORS 455.720  
Stats. Implemented: ORS 455.720  
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1480

### Additional Responsibilities for Building Officials

In addition to the above responsibilities, all certified individuals who are performing the duties of the building official shall also:

(1) Ensure a person is properly certified under these rules and meets the minimum experience requirements prior to allowing the individual to perform plan reviews and inspections.

(2) Ensure all inspectors and plans examiners in the municipality take all required continuing education and track the continuing education in a manner prescribed by the division.

(3) Ensure all applicable building code statutes and rules, including statewide code interpretations, directives and other building program requirements and allowing the use of statewide alternate method rulings are enforced and carried out through their certified individuals in their municipality.

Stat. Auth.: ORS 455.720  
Stats. Implemented: ORS 455.720  
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1500

### Building Official and Inspector Sanctions Process

(1) The division shall establish uniform procedures for the processing and resolution of complaints relating to building officials and inspectors certified pursuant to ORS 455.735. The division may condition, suspend or revoke a certification in the course of resolving a complaint.

(2) Failure to act "in the public interest in the performance of their duties" in accordance with ORS 455.740 shall include, but not be limited to:

(a) Providing or having knowledge of, false education, work experience or documentation being used to meet certification or continuing education requirements, or during the examination, using unauthorized notes, examinations or examination answers at an examination, copying from another, allowing another to copy or otherwise use unauthorized methods to gain an advantage or give another person an advantage during an examination.

(3) Applicants sanctioned under this rule may be required to wait at least one year from the date the application was denied before they may re-apply for any certification.

(a) Failing to complete continuing education requirements;

(b) Permitting, allowing or performing plan reviews or inspections without proper certification;

(c) Engaging in a pattern that fails to enforce the specialty code, including statewide code interpretations, site-specific interpretations, directives or other building program requirements and failure to allow the use of alternate method rulings.

(d) After notification, engaging in a pattern of requiring construction or installations to exceed the requirements of the specialty codes, unless otherwise specified by the designer(s);

(f) Requiring an individual to approve structures or installations that do not comply with the specialty codes;

(g) Any other activity prejudicial to the administration and enforcement of the state building code.

(4) Upon a finding of a violation of section (2) of this rule, the director may, in accordance with the requirements of ORS Chapter 183, place conditions on a certification in lieu of suspension or revocation.

(5) In determining the appropriate sanction any applicable factors shall be taken into account, including, but not limited to:

(a) Prior history of violations;

(b) Extent to which corrective action was taken; and

(c) The element of risk or danger to any person caused by the violation.

(6) Certifications of building officials, plans examiners and inspectors who do not comply with the code-change education or continuing education requirements contained in these rules shall lapse. Persons whose certifications have lapsed for failure to comply with code-change or continuing education requirements shall be required to re-apply for certification and take a division-approved examination in the same manner as a new applicant.

Stat. Auth.: ORS 455.740  
Stat. Implemented.: ORS 455.740  
Hist.: BCD 13-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 11-2004, f. 8-13-04, cert. ef. 10-1-04; Renumbered from 918-098-0500, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1600

### Purpose and Scope

The provisions of OAR 918-098-0600 to 918-098-0630 establish the background qualifications and the evaluation and testing criteria to be registered as a post-earthquake structural damage inspector.

Stat. Auth.: ORS 455.100 & 455.448  
Stats. Implemented: ORS 455.448 & 455.449  
Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-098-0600, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1610

### Definitions

For the purposes of OAR 918-098-1600 to 918-098-1630, the following definitions apply:

(1) "Building Inspector" as set forth in ORS 455.448 means a person registered pursuant to the provisions of OAR 918-098-1620 as either a general post-earthquake inspector or a limited post-earthquake inspector;

(2) "General Post-Earthquake Damage Inspector" means a person registered under the provisions of OAR 918-098-1620 or appointed by the director pursuant to ORS 455.448 to perform post-earthquake damage and habitability assessments on all structures; and

(3) "Limited Post-Earthquake Damage Inspector" means a person registered under the provisions of OAR 918-098-1620 or appointed by the director pursuant to ORS 455.448 to perform post-earthquake damage and habitability assessments on detached one- and two-family dwellings, row-houses and townhouses less than three stories in height and their accessory structures less than three stories in height.

Stat. Auth.: ORS 455.100 & 455.448  
Stats. Implemented: ORS 455.448 & 455.449  
Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-098-0610, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1620

### Post Earthquake Damage Inspector Registration Requirements

(1) All persons seeking registration as a post-earthquake inspector must have education, training and experience, as follows:

(a) To be registered as a general post-earthquake damage inspector, an applicant must:

(A) Be registered in any state as an architect, or be qualified by training and experience to take the Oregon examination for registration as an architect; or

(B) Be certified in the state of Oregon as an A-level, B-level commercial, or fire and life safety plans examiner or inspector, or be qualified to take the Oregon A-level, B-level commercial or fire and life safety plans examiner or inspector certification examination; or

(C) Be registered in any state as a certified professional engineer in civil or structural engineering, or be qualified by education and experience to take the Oregon certified professional engineer examination in civil or structural engineering, even though the applicant has not taken the Fundamentals of Engineering examination.

(b) To be registered as a limited post-earthquake damage inspector, an applicant must:

(A) Meet any of the qualifications listed in subsection (1)(a) of this rule;

(B) Be certified in the State of Oregon as a residential building inspector, or be qualified to take the Oregon residential building inspector examination or equivalent; or

(C) Be certified in the State of Oregon as a residential plans examiner, or be qualified to take the Oregon plans examiner examination or equivalent.

(2) In addition to the education, training and experience requirements, all persons must:

(a) Complete an application form provided by the division; and

(b) Complete, or have completed within three years of application, an Applied Technology Council (ATC) training course approved by the division or an emergency management drill or event.

Stat. Auth.: ORS 455.100 & 455.448  
Stats. Implemented: ORS 455.448 & 455.449  
Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-098-1620, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

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## 918-098-1630

### Post Earthquake Damage Inspector Registration Period; Renewal

(1) All persons registered under the provisions of OAR 918-098-1620 shall be registered for a period of up to three years. Registration shall expire on July 31 of the third year of the registration period.

(2) Registration renewal requires meeting all requirements for registration in OAR 918-098-1620.

Stat. Auth.: ORS 455.100 & 455.448

Stats. Implemented: ORS 455.448 & 455.449

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-098-0630, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-098-1900

### Citation Requirement Effective January 1, 2006

In addition to any other requirements set forth in statute and rule, beginning January 1, 2006, all inspectors and plans examiners certified under Division 098, OAR 918-225-0540, 918-281-0020 918-695-0400, and ORS 460.055 issuing corrective notices at construction sites or to buildings or related appurtenances during a plan review must adequately cite the applicable specialty code sections, Oregon administrative rules, or statutes whenever a re-inspection is required as a result of the inspection or plan review.

Stat. Auth.: ORS 455.720 & 455.740

Stats. Implemented: ORS 455.720 & 455.740

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-251-0030

### Requests for Code Interpretation

(1) Scope. This rule deals with Electrical Specialty Code interpretations.

(2) Informal Interpretations. Requests for informal interpretation of an Electrical Specialty Code provision shall be directed to the electrical inspector of the appropriate inspecting jurisdiction. Requests to the division should be directed to the Chief Electrical Inspector. Requests can be communicated by any method. An informal opinion represents the thinking of the person providing the response and is not binding on the inspecting jurisdiction. A person receiving an informal interpretation relies on the interpretation at the person's own risk.

(3) Formal Interpretation. Electrical code interpretations that bind the division must be requested under ORS 455.060.

(4) Where an issue is formally presented to the board for technical and scientific findings and then to the Chief Electrical Inspector or administrator for decision, a person requesting a formal interpretation is generally responsible for presenting adequate evidence of scientific and technical items related to the question so that the Chief Electrical Inspector can act.

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

Stat. Auth.: ORS 479.730(5)

Stats. Implemented: ORS 479.730(5)

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-251-0040

### Electrical Specialty Code Appeals, ORS 479.853

When an electrical appeal is directed to the Chief Electrical Inspector under ORS 479.853:

(1) The person appealing shall prepare a statement showing:

(a) Parties involved, addresses, telephone and FAX numbers, if available;

(b) Code section involved;

(c) A diagram or drawing of the installation, with distances shown to scale;

(d) An explanation of why the ruling should be reversed; and

(e) Whether the inspecting jurisdiction issued a "stop work" order.

(2) The person being appealed shall file a copy of the written interpretation or decision, if there is a written ruling, indicate what was relied on for the ruling, advise if a stop work order was issued and detail the immediate fire and safety hazards involved.

(3) If the decision is appealed to the board, the entire file shall be available for review.

(4) If the inspecting jurisdiction issued a "stop work order" in connection with the transaction:

(a) It is provisionally found that the product or installation presents an immediate fire or life safety hazard and the product or installation shall not be operated pending appeal;

(b) The appellant seeking permission to operate the product or installation shall file a specific request with the Chief Electrical Inspector and shall also notify the jurisdiction issuing the "stop work order."

Stat. Auth.: ORS 479.730(5)

Stats. Implemented: ORS 479.853

Hist.: DC 11-1978, f. 4-3-78, ef. 7-1-78; DC 10-1982, f. & ef. 3-1-82; Renumbered from 814-022-0400; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-270-0010; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-281-0000

### Scope

The rules in OAR 918-281-0000 to 918-281-0060 establish requirements for certification of electrical inspectors.

Stat. Auth.: ORS 455.720 & 479.810

Stats. Implemented: ORS 455.720 & 479.810

Hist.: DC 74, f. 5-21-76, ef. 8-1-76; DC 102, f. & ef. 11-1-77; DC 1-1979, f. & ef. 1-5-79; DC 5-1979(Temp), f. & ef. 3-5-79; DC 10-1979, f. & ef. 6-8-79; DC 12-1981, f. 9-29-81, ef. 10-1-81; DC 10-1982, f. & ef. 3-1-82; DC 7-1983, f. & ef. 3-11-83; Renumbered from 814-022-0108; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-260-0010; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-281-0010

### Continuing Education

Electrical inspectors shall obtain the following continuing education credits:

(1) Those with electrical licenses shall maintain their license. During electrical code-change years, the code-change credits shall be obtained prior to or no later than six months after the effective date of the applicable code.

(2) Those electrical inspectors who do not have an electrical license shall obtain at least eight hours of continuing education credits each year.

(a) During electrical code-change years, electrical code-change credits shall be obtained prior to or no later than six months after the effective date of the applicable code-change.

(b) During non-code-change years the continuing education credits shall be as provided in the continuing education rules.

Stat. Auth.: ORS 479.650

Stats. Implemented: ORS 455.720 & 479.810

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-281-0020

### Electrical Specialty Code Inspector Certification

(1) An Electrical Specialty Code inspector:

(a) Inspects electrical installations regulated by the **Oregon Electrical Specialty Code**;

(b) Inspects electrical installations regulated by the **Oregon Residential Specialty Code**; and

(c) May do electrical plan reviews as provided in OAR 918-311-0040.

(2) To qualify for the certification, the individual shall have the following training or experience or both:

(a) Four years experience as a licensed general journeyman electrician and a current valid Oregon general supervising electrician license;

(b) A four-year Bachelor of Science degree in electrical engineering, plus three years approved experience in design, inspection or supervision of installations covered by the **National Electrical Code** or **Oregon Electrical Specialty Code**; or

(c) Equivalent experience or qualifications approved by the board.

(3) All applicants shall pass a board-approved examination with a minimum grade of 75 percent covering:

(a) The **Oregon Electrical Specialty Code** and electrical provisions of the Oregon Residential Specialty Code; and

(b) Electrical theory, design, installation and materials.

(4) Persons qualifying under subsection (2)(b) or (2)(c) of this rule shall pass the Oregon general supervising electrician license examination with a minimum grade of 75 percent. An Oregon general supervising electrician license shall not be issued to applicants under these subsections.

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

Stat. Auth.: ORS 455.720 & 479.730

Stats. Implemented: ORS 455.720 & 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-281-0030

### Limited Electrical Certification

(1) Limited One and Two Family Dwelling Electrical Inspector. A limited one- and two-family dwelling electrical inspector:

(a) Can work only in an inspecting jurisdiction having an **Electrical Specialty Code** inspection program and employing an Electrical Specialty Code inspector;

(b) Is restricted to dealing with dwellings with electrical services of 400 amperes (320 amperes continuous) or less; and

(c) Shall have:

(A) A valid Oregon limited residential electrician license with two years of experience or general journeyman license;

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(B) Approved, equivalent experience and training required to be a limited residential or general journeyman electrician; or

(C) Certification and one year of inspection experience under the **Plumbing, Mechanical, or Structural Specialty Code** and completion of an approved one- and two-family dwelling electrical inspection training program; and

(d) May not perform electrical plan reviews.

(2) Applicants must pass a written examination with a minimum grade of 75 percent covering:

(a) Articles from the current adopted edition of the electrical portions of the **One and Two Family Dwelling Specialty Code** and Electrical Specialty Code as referred to by the Dwelling Code, and electrical section administrative rules; and

(b) Technical knowledge of the electrical field.

(3) Applicants must also pass an oral exam on field techniques in inspection, determining one- and two-family electrical code violations, and working with the trade.

(4) An inspector-in-training must additionally meet the requirements of OAR 918-281-0040.

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

Stat. Auth.: ORS 455.720 & 479.730

Stats. Implemented: ORS 455.720 & 479.730

Hist.: DC 74, f. 5-21-76, ef. 8-1-76; DC 102, f. & ef. 11-1-77; DC 1-1979, f. & ef. 1-5-79; DC 5-1979(Temp), f. & ef. 3-5-79; DC 10-1979, f. & ef. 6-8-79; DC 12-1981, f. 9-29-81, ef. 10-1-81; DC 10-1982, f. & ef. 3-1-82; DC 7-1983, f. & ef. 3-11-83; Renumbered from 814-022-0108; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-260-0100; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-281-0040

### Inspector-in-Training

A limited one- and two-family dwelling electrical inspector in training shall:

(1) Be trained under an approved training program under ORS 455.720.

(2) The training program shall:

(a) Be conducted by a municipality having an **Electrical Specialty Code** inspection program;

(b) Be comprised of at least 200 classroom training hours and 800 on-the-job electrical training hours at a jurisdiction having an **Electrical Specialty Code** inspection program;

(c) Have a syllabus that describes the course content, including both class and field training, and class and field training schedules;

(d) Restrict an **Electrical Specialty Code** inspector from supervising more than three trainees at one time, except as provided in section (3) of this rule;

(e) Require instructors to keep class attendance and field training records, showing the dates of training sessions, hours of class attendance and hours of field experience and be signed by the instructor for each session;

(f) Allow no more than three absences from class sessions;

(g) Make the records in subsections (e) and (f) of this section a part of the applicant's record for certification; and

(h) Have a certified **Electrical Specialty Code** inspector assisting in all class presentations.

(2) While enrolled in a training program under these rules, a student shall perform electrical inspections as a training exercise only when accompanied by a certified **Electrical Specialty Code** inspector. Electrical inspectors conducting field training classes shall supervise no more than four students at a time.

(3) The applicant shall be accompanied by an **Electrical Specialty Code** inspector and make a minimum of:

(a) Ten 200-ampere service inspections; and

(b) Fifteen 200- to 400-ampere services.

(4) Upon completion of the program, the applicant shall be field evaluated as provided in OAR 918-281-0050 and pass the examination as provided in OAR 918-281-0020.

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

Stat. Auth.: ORS 455.720 & 479.730

Stats. Implemented: ORS 455.720 & 479.730

Hist.: DC 74, f. 5-21-76, ef. 8-1-76; DC 102, f. & ef. 11-1-77; DC 1-1979, f. & ef. 1-5-79; DC 5-1979(Temp), f. & ef. 3-5-79; DC 10-1979, f. & ef. 6-8-79; DC 12-1981, f. 9-29-81, ef. 10-1-81; DC 10-1982, f. & ef. 3-1-82; DC 7-1983, f. & ef. 3-11-83; Renumbered from 814-022-0108; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-260-0120; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-281-0050

### Evaluation

(1) The field evaluation described in OAR 918-281-0040(4) shall be conducted by a special evaluating team of one state or local government electrical inspector, an electrical contractor or designee and one other person, all appointed by the administrator. After administering the oral examination and field evaluation, the team shall recommend the applicant either be certified or re-enter the training program. In special cases, the evaluation team may recommend retraining in certain parts of the training program.

(2) Upon passing the field evaluation test, the applicant shall be eligible to sit for the written examination.

Stat. Auth.: ORS 455.720 & 479.730

Stats. Implemented: ORS 455.720 & 479.730

Hist.: DC 74, f. 5-21-76, ef. 8-1-76; DC 102, f. & ef. 11-1-77; DC 1-1979, f. & ef. 1-5-79; DC 5-1979(Temp), f. & ef. 3-5-79; DC 10-1979, f. & ef. 6-8-79; DC 12-1981, f. 9-29-81, ef. 10-1-81; DC 10-1982, f. & ef. 3-1-82; DC 7-1983, f. & ef. 3-11-83; Renumbered from 814-022-0108; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-260-0130; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-281-0060

### Program Review

(1) The division shall monitor the one- and two-family dwelling inspection training program and submit a written report to the board. The report shall include:

(a) The number of persons entering and completing the program;

(b) The number certified;

(c) The number of inspections and violations found;

(d) Recommendations on program changes; and

(e) Findings on the classes, inspector-in-training program and overall findings at the end of the program.

(2) The board, in reviewing these reports, may recommend changes in the program or its termination.

Stat. Auth.: ORS 455.720 & 479.730

Stats. Implemented: ORS 455.720 & 479.730

Hist.: DC 74, f. 5-21-76, ef. 8-1-76; DC 102, f. & ef. 11-1-77; DC 1-1979, f. & ef. 1-5-79; DC 5-1979(Temp), f. & ef. 3-5-79; DC 10-1979, f. & ef. 6-8-79; DC 12-1981, f. 9-29-81, ef. 10-1-81; DC 10-1982, f. & ef. 3-1-82; DC 7-1983, f. & ef. 3-11-83; Renumbered from 814-022-0108; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-260-0150; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-281-0070

### Certification Extension

Manufactured Structure Installation Inspectors. A certified manufactured structure installation inspector who is certified in one or more specialty codes may have the inspector's certification indorsement authorizing inspection of electrical connections between the approved manufactured dwelling and approved service point without payment of additional certification fees if the applicant:

(1) Submits an application for certification indorsement as a manufactured structure electrical installation inspector; and

(2) Passes an approved examination covering knowledge of the **Oregon Electrical Specialty Code** and practice applicable to manufactured structure installations.

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

Stat. Auth.: ORS 455.720 & 479.730

Stats. Implemented: ORS 455.720 & 479.730

Hist.: DC 74, f. 5-21-76, ef. 8-1-76; DC 102, f. & ef. 11-1-77; DC 1-1979, f. & ef. 1-5-79; DC 5-1979(Temp), f. & ef. 3-5-79; DC 10-1979, f. & ef. 6-8-79; DC 12-1981, f. 9-29-81, ef. 10-1-81; DC 10-1982, f. & ef. 3-1-82; DC 7-1983, f. & ef. 3-11-83; Renumbered from 814-022-0108; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-260-0160; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-308-0110

### Code Interpretation Dispute Resolution

Municipalities shall provide:

(1) A reasonable method to resolve conflicts in code interpretation within the municipality; and

(2) Information concerning appeal rights to the division under ORS 479.853.

Stat. Auth.: ORS 479.853

Stats. Implemented: ORS 479.853

Hist.: BCA 21-1993, f. 10-5-93, cert. ef. 12-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-300-0270; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-400-0230

### Requests for Code Interpretation

(1) Scope. This rule deals with **Oregon Elevator Specialty Code** interpretations.

(2) Advisory Interpretations. Requests for advisory interpretation of an **Oregon Elevator Specialty Code** provision shall be directed to the Chief Elevator Inspector. Requests can be communicated by any method.



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The advisories represent the thinking of the person providing the response and are not binding on the division. A person receiving an informal interpretation relies on the interpretation at the person's own risk.

(3) Formal Interpretations. Oregon Elevator Specialty Code interpretations that bind the division must be requested under ORS 455.060, and the issue formally presented to the board for technical and scientific findings and recommendation to the administrator for decision. A person requesting a formal interpretation is responsible for presenting adequate evidence of scientific and technical facts related to the question so the board and director can act.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 455.060 & 460.085  
Stats. Implemented: ORS 455.060 & 460.085  
Hist.: BCD 18-1995, f. & cert. ef. 12-15-95; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-690-0340

### Requests for Code Interpretation

(1) Scope. This rule deals with **Plumbing Specialty Code** interpretations.

(2) Informal Interpretations. Requests for informal interpretation of a **Plumbing Specialty Code** provision shall be directed to the plumbing inspector of the appropriate inspecting jurisdiction. Requests to the division should be directed to the Chief Plumbing Inspector. Requests can be communicated by any method. An informal opinion represents the thinking of the person providing the response and is not binding on the inspecting jurisdiction. A person receiving an informal interpretation relies on the interpretation at the person's own risk.

(3) Formal Interpretations. **Plumbing Specialty Code** interpretations that bind the division must be requested under ORS 455.060 or to the Chief Plumbing Inspector under appeal of a decision made by a building official under authority established pursuant to ORS 455.150.

(4) Where an issue is formally presented to the board for technical and scientific findings and then to the director for decision under ORS 455.060, a person requesting a formal interpretation is generally responsible for presenting adequate evidence of scientific and technical items related to the question so the board and director can act.

(5) Where an issue is formally presented under appeal to the Chief Plumbing Inspector for interpretation, the person requesting the interpretation is responsible to present the question in writing with adequate information defining the reasons for requesting the interpretation and any other relevant documents or materials to be considered.

(6) Appeals of formal interpretations by the Chief Plumbing Inspector shall be made to the State Plumbing Board as defined in ORS 455.475.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 447.020  
Stats. Implemented: ORS 447.020  
Hist.: BCD 6-1998, f. 3-2-98, cert. ef. 4-1-98; BCD 22-2000, f. 9-19-00, cert. ef. 10-1-00; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-690-0350

### Plumbing Specialty Code Appeals, ORS 455.690

All code-related appeals from a municipal appeals board or from a subordinate officer of the division are under ORS 455.690.

- (1) The person appealing shall prepare a statement showing:
  - (a) Parties involved, addresses, telephone and FAX numbers, if available;
  - (b) Code section involved;
  - (c) An explanation of why the ruling should be reversed; and
  - (d) Whether the inspecting jurisdiction issued a "stop work" order.
- (2) The person being appealed shall file a copy of the written interpretation or decision, advise if a stop work order was issued and detail the immediate hazards involved.

Stat. Auth.: ORS 447.020  
Stats. Implemented: ORS 455.690  
Hist.: BCD 6-1998, f. 3-2-98, cert. ef. 4-1-98; Suspended by BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-695-0400

### Rules Establishing Certification for Plumbing Inspectors

(1) Scope: To promote effective and uniform enforcement of the **Oregon Plumbing Specialty Code** by improving the competence of plumbing inspectors, this rule establishes minimum training and experience qualifications to make inspections for compliance with the **Oregon Plumbing Specialty Code**.

- (2) A Plumbing Specialty Code inspector:
  - (a) Inspects plumbing installations regulated by the **Oregon Plumbing Specialty Code**;

(b) Inspects plumbing installations regulated by the **Oregon Residential Specialty Code**; and

(c) May do plumbing plan reviews as provided in OAR 918-780-0040.

(3) No person shall be appointed or employed as a plumbing inspector by any municipality without being currently certified under the provisions of this rule.

(4) Limits on Municipalities: Nothing in the rules prohibits a local government from establishing additional requirements in the selection and hiring of plumbing inspectors. Nothing in OAR chapter 918, divisions 750 to 785 is intended to dictate the internal administrative organization of a city or county or to limit or otherwise affect the authority of a municipality to dismiss or suspend an inspector.

(5) Revocation or Suspension: The administrator may, upon notice and hearing, revoke or suspend the certification of any plumbing inspector when the certified person has acted in an incompetent or untrustworthy manner in performing inspections. "Incompetent or untrustworthy" means:

- (a) Knowingly or recklessly failing to inspect;
- (b) Knowingly filing false inspection reports; or
- (c) Failing to exercise due diligence or care in performing inspections.

Certification shall be revoked when the administrator has evidence that the municipality is using inspectors in inspection duties other than authorized by certification or if the municipality or inspector fails to meet the certification criteria in OAR chapter 918, divisions 750 to 785. In any proceeding under this rule, the municipality that employs the plumbing inspector shall be entitled to appear as a party in interest, either for or against the proposed action.

(6) Continuing Education:

(a) To maintain certification, plumbing inspectors shall attend continuing education courses or seminars approved by the division.

(b) The division approves course content, objectives, scope, evaluation method and instructor. A description of the course shall be submitted on a division form:

(A) The content of a general continuing education course shall be relevant to the administration, inspection or plans examination functions of a code enforcement agency;

(B) The content of a code-changes course shall include changes to the model code plus Oregon amendments;

(C) The instructional time allocated shall be appropriate to the scope of the course;

(D) The text of self-study type courses shall be submitted for review;

(E) An evaluation shall be required to ensure that the course objectives have been met;

(F) The instructor of the course shall be recognized in accordance with subsection (c) of this section.

(c) Instructor recognition is limited to specific courses. Requests for recognition shall be submitted on a division form. To be recognized as an instructor for continuing education courses, the instructor shall be:

(A) Recognized by a university, college or community college for classroom teaching of the specific course, or similar courses, at the educational institution; or

(B) Generally recognized by virtue of license, certification, degree, experience or recommendation of a trade or professional association, as having expertise in the subject matter of the specific course.

(d) Continuing education requirements shall be:

(A) Plumbing inspectors excluding limited sewer inspectors shall attend one or more approved continuing education courses or seminars, totaling at least six hours of actual instruction each calendar year. Successful completion of approved self-study courses may be substituted for course attendance. Continuing education requirements shall be waived for the calendar year in which an inspector is initially certified;

(B) Inspectors shall attend an approved code-changes course or seminar within nine months of the effective date of a new Oregon Plumbing Specialty Code. The attendance requirement shall be waived if the examination passed to obtain the certification included the most recent code-changes.

(e) Continuing education requirements met or exceeded in one calendar year shall not be carried forward to subsequent years;

(f) Satisfactory completion of approved challenge examinations may substitute for required attendance at code-changes courses or seminars;

(g) The certification of any person who fails to meet the continuing education requirements shall lapse, and reapplication shall be required in accordance with section (6) of this rule.

(7) Application for Certification or Appeals:

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(a) A person seeking certification under this rule shall submit a division application form and provide sufficient information to establish qualification for the desired certification. A certification fee shall be submitted with the application as listed in ORS 455.735;

(b) The division shall process the application within 30 days from the date a completed application including verification of training and work is received. The applicant shall be promptly notified in writing of approval or denial of the application. The division shall administer the necessary tests within 60 days of the date of division approval;

(c) An applicant aggrieved by an action of the division related to certification may file an appeal with the administrator under ORS Chapter 183. The administrator will seek the advice of the board before making a decision.

(8) Applicants: The division shall maintain and, upon request of municipalities, furnish information on applicants for appointment or employment as plumbing inspectors.

(9) Qualifications: An applicant will be certified as a plumbing inspector under this rule if the following minimum qualifications are met:

(a) Experience and Training:

(A) 3 years of employment and experience as a Journeyman Plumber, with an Oregon Journeyman Plumber's Certificate of Competency;

(B) A degree in mechanical engineering or certified professional registration with 2 years of work experience in plumbing design, installation or inspection;

(C) 4 years of work experience in the inspection of plumbing installations of which at least 2 years is of commercial, industrial and multi-family structures, or if the 4 years of work experience is in the inspection of one- and two-family dwelling installations, the completion of a division-approved plumbing inspector in-training program;

(D) Board-approved equivalent experience and training of paragraphs (A), (B) and (C) of this subsection; or

(E) Persons certified as Oregon one and two family dwelling plumbing inspectors as of April 1, 1998 and completing five years of plumbing inspection experience shall be considered qualified to sit for examinations as a plumbing inspector.

(b) Examination: Passing a board-approved examination on the **Oregon Plumbing Specialty Code** covering plumbing theory, inspection techniques, communication skills, public relations, design, installation, statutory rules, authority and materials.

(10) Training:

(a) Upon application, the division shall examine and evaluate any program or facility established by a municipality or educational institution for the training of plumbing inspectors;

(b) If the division finds that a training program meets the minimum requirements established pursuant to this rule, the division shall, in writing, certify the training program as qualified for such time and conditions as the division may prescribe. An individual complies with any minimum requirement for plumbing inspector established pursuant to classification and requirements in this rule after satisfactorily completing a training program certified under this rule.

(11) Special Certification:

(a) Limited Certification: The division, with board approval, may issue a limited certification for special types of inspections. Such limited certification will only be issued after the applicant passes an appropriate test of knowledge and ability and complies with section (6) of this rule;

(b) Limited Plumbing Inspector - Building Sewers. Limited certification for plumbing inspection of building sewers from five feet outside the building to the disposal terminal or connection with a main sewer line may be issued. To be certified, an applicant must have the following qualifications:

(A) A Journeyman Plumber License;

(B) Two years' experience in sewer design, installation, or inspection; or

(C) Experience and training equivalent to paragraph (A) or (B) of this subsection approved by the board;

(D) Passing a board-approved examination on code, materials and installation practices for building sewers and sewers; and

(E) Limited certification shall be revoked if the municipality or inspector fail to continuously meet the criteria contained in paragraph (D) of this subsection or when the administrator has evidence the inspector or municipality is using limited inspectors in inspection duties other than authorized.

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

Stat. Auth.: ORS 447.020 & 455.720

Stats. Implemented: ORS 447.020

Hist.: DC 39, f. 1-6-75, ef. 2-1-75; DC 79, f. 6-16-76, ef. 8-1-76; DC 102, f. & ef. 11-1-77; DC 1-1979, f. & ef. 1-5-79; DC 5-1979(Temp), f. & ef. 3-5-79; DC 9-1979, f. & ef. 6-8-79;

DC 1-1983, f. & ef. 1-3-83; DC 6-1985, f. & ef. 2-8-85; Renumbered from 814-021-0109; BCA 14-1992, f. 6-29-92, cert. ef. 7-1-92; BCD 6-1998, f. 3-2-98, cert. ef. 4-1-98, Renumbered from 918-750-0050; BCD 21-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 22-2000, f. 9-19-00, cert. ef. 10-1-00; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

## 918-695-0410

### Certification for Medical Gas Plumbing Inspectors

(1) Scope. To promote effective and uniform enforcement of the **Oregon Plumbing Specialty Code** by improving the competence of plumbing inspectors, this rule establishes minimum training and certification qualifications to make inspections for compliance with the **Oregon Plumbing Specialty Code**. Persons employed for purposes of enforcing the requirements of other administrative agencies are exempt from this section.

(2) No person shall be appointed or employed as a medical gas plumbing inspector by any municipality without being currently certified under the provisions of this rule.

(3) Qualifications. Persons shall be certified as an Oregon plumbing inspector for inspections for compliance with the **Oregon Plumbing Specialty Code**.

(4) Examination. Persons shall have a current and valid medical gas certification issued by a division-approved organization meeting the provisions of ASSE 6020-1997 Standard for Medical Gas Systems Inspectors Professional Qualifications.

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

Stat. Auth.: ORS 447.010

Stats. Implemented: ORS 447.010

Hist.: BCD 27-2000, f. 10-13-00 cert. ef. 10-01-01; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05

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**Adm. Order No.:** BCD 17-2005(Temp)

**Filed with Sec. of State:** 7-12-2005

**Certified to be Effective:** 7-12-05 thru 9-30-05

**Notice Publication Date:**

**Rules Amended:** 918-225-0240, 918-225-0430, 918-225-0560, 918-225-0660

**Subject:** This rulemaking adopts current editions of the standards of the ASME Boiler and Pressure Vessel Code, ASME Code for Pressure Piping and the National Board Inspection Code (NBIC) which are adopted as the Oregon Boiler and Pressure Vessel Specialty Code.

**Rules Coordinator:** Nicole M. Jantz—(503) 373-7438

## 918-225-0240

### Definitions

As used in OAR chapter 918, division 225, unless the context requires otherwise:

(1) "Agricultural Purposes" means:

(a) Sowing, tending, and harvesting of products of the soil grown under natural conditions;

(b) Raising of poultry or fowl;

(c) Pasturage or raising of livestock or other animals; or

(d) Original processing of the farm product, but not the processing of the product of a different operator, or reprocessing work as freezing, canning, or packing if performed substantially for commercial purposes.

(2) "Available" to determine inspection fees at cost, means the vessels must be due for inspection in the year the notification is applicable, and must all be ready for inspection at the time designated by the inspector.

(3) "Board" is defined in ORS 480.515(1).

(4) "Boiler Room" means any enclosed room or designated space within a building, intended by design or by usage to contain a boiler that is connected and available for use. A boiler located in an area not meeting the definition of "boiler room" under OAR 918-225-0465 shall apply to any space within 20 feet of any burner.

(5) "Building Service Piping" means piping systems operating at or less than 150 psig steam; and water at or less than 160 psig and 250o F. as described in **ANSI/ASME Standard B31.9**.

(6) "Chief Inspector" means the inspector appointed by the Director pursuant to ORS 480.565(1).

(7) "Farm" means an area of land:

(a) Located in a rural district;

(b) Of sufficient size to generally be considered as a farm in its locale; and

(c) Devoted primarily to tillage and raising crops under natural conditions, or to raising animals, fowl, or poultry.

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(8) "Emergency" as used in ORS 480.630(7) means an unplanned circumstance requiring immediate repair, installation, replacement or shut-down because of risk to health, life or property.

(9) "Hobby" or "Demonstration" means recreational or other non-commercial use.

(10) "Immediate Safety Hazard" means hazardous conditions exist requiring immediate correction to a boiler, pressure vessel or pressure piping system to preserve the safety of people or property.

(11) "Installer," as used in the boiler or pressure vessel laws and rules, means the person making the water, steam, air, refrigerant or other product piping connection to the boiler or pressure vessel. A person who transports or merely positions the boiler or pressure vessel is not an "installer." An electrician making electrical connections is not an "installer."

(12) "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

(13) "Operating" means any vessel connected and ready for service.

(14) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character.

(15) "Place of Public Assembly" means a building used or held for use, in whole or in part, for worship, health treatment, rest, recuperation or retirement living; child care nurseries or institutions; public meetings; education; instruction; entertainment; eating; recreation; or awaiting transportation.

(16) "Pressure Piping" means piping systems and components under the scope of **ASME B31.1, B31.3, B31.5 and B31.9**.

(17) "Pressure Relief Valve" means a valve activated by inlet static pressure which opens in proportion to the increase in pressure over the opening pressure range. Only ASME approved valves are allowed under the boiler rules.

(18) "Pressure Vessel" is defined in ORS 480.515(9).

(19) "Psig" means pounds per square inch gauge pressure.

(20) "Quantity," to determine inspection fees at cost, means six or more vessels.

(21) "Related Appurtenance" is defined in ORS 480.515(11).

(22) "Safety Valve" means a valve activated by inlet static pressure and characterized by rapid opening or pop action. Only ASME approved valves are allowed under the boiler rules.

(23) "Same Location," to determine inspection fees at cost, means that all vessels are within 2,000 feet of one another.

(24) "Service of Process" means deposit in the U.S. mail a copy of a notice addressed to the respondent at the respondent's last known address.

(25) "Single Private Residence" means a one-family dwelling structure.

(26) "Process Piping Inspector" means the owner's inspector, for the inspection of ASME B31.3 Process Piping, Category "M" fluid service only.

(27) "Structure" means a building or shed with a roof and enclosed on the sides 75 percent or more.

(28) "Traction Boiler" means a boiler constructed before January 1, 1961, designed to operate or pull equipment, or to convert steam power into a flywheel energy driving apparatus such as a thresher, road roller, or grinding equipment.

(29) "Vessel That is Considered Subject to Corrosion or Erosion" means the vessel contains or is intended to contain contents having a corrosive or erosive effect on any portion of the vessel. The use of glass linings leaves a vessel subject to corrosion unless all portions of the vessel are impervious to the corrosive or erosive effects of the contents.

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

Stat. Auth.: ORS 480.545 & 455.030

Stats. Implemented: ORS 480.525, 480.545, 480.550, 480.560 & 480.565

Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 3-1982, f. & ef. 2-3-82; DC 1-1984, f. & ef. 1-5-84; BCA 4-1989, f. & cert. ef. 4-17-89; Renumbered from 814-025-0003; BCA 4-1989, f. & cert. ef. 4-17-89; BCA 5-1991, f. & cert. ef. 3-15-91; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0005; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 26-1998, f. 12-30-98, cert. ef. 1-1-99; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 4-2003, f. & cert. ef. 3-14-03; BCD 17-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05

## 918-225-0430

### Designation of Effective Codes

The **Boiler and Pressure Vessel Specialty Code** containing the minimum safety standards for boilers, pressure vessels, pressure piping, nuclear components, parts, items, and repair and alteration procedures in Oregon is:

(1) ORS 480.510 to 480.665 and OAR chapter 918, division 225;

(2) The **Boiler and Pressure Vessel Code of The American Society of Mechanical Engineers (ASME), 2004 Edition as published of Section I; Section II, Parts A, B,C and D; Section IV; Section V; Section VI;**

**Section VII; Section VIII, Division 1, 2 and 3; Section IX; and Section X.**

(3) The **2004 Edition of the ANSI/ASME B31.1 Power Piping Code.**

(4) The **2004 Edition of the ANSI/ASME B31.3 Process Piping Code.**

(5) The **2001 Edition of the ANSI/ASME B31.5 Refrigeration Piping Code.**

(6) The **1996 Edition of the ANSI/ASME B31.9 Building Service Piping Code.**

(7) The **2004 Edition of the National Board Inspection Code ANSI/NB 23;**

(8) The **2004 Edition of NFPA 85, Boiler and Combustion Systems Hazards Code.**

(9) The **2004 Edition of ASME CSD-1, Controls for Safety;** and

(10) The alternate methods provisions under OAR 918-225-0440.

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

Stat. Auth.: ORS 455.020, 480.545 & 480.550

Stats. Implemented: ORS 480.545, 480.550 & 480.560

Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 19, f. 6-21-73, ef. 7-1-73; DC 27(Temp), f. & ef. 12-31-73; DC 33, f. 5-6-74, ef. 5-25-74; DC 38(Temp), f. & ef. 11-1-74; DC 50, f. 7-2-75, ef. 7-25-75; DC 89, f. & ef. 6-2-77; DC 93, f. & ef. 7-19-76; DC 1-1978, f. 1-5-78, ef. 1-15-78; DC 4-1980, f. & ef. 5-30-80; DC 6-1982, f. & ef. 2-4-82; DC 23-1982, f. & ef. 11-9-82; DC 18-1983, f. & ef. 8-11-1983; DC 21-1983, f. & ef. 9-29-83; DC 1-1984, f. & ef. 1-5-84; DC 18-1984, f. & ef. 5-9-84; DC 36-1984, f. & ef. 12-4-84; DC 16-1985, f. & ef. 7-1-85; DC 6-1986, f. & ef. 5-5-86; DC 2-1987, f. & ef. 2-18-87; BCA 5-1987, f. & ef. 8-24-87; BCA 15-1988, f. & cert. ef. 11-16-88; BCA 25-1989, f. & cert. ef. 7-27-89; Renumbered from 814-025-0006; BCA 5-1990, f. & cert. ef. 2-6-90; BCA 26-1990, f. & cert. ef. 10-30-90; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0015; BCD 17-1996, f. & cert. ef. 9-17-96; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 26-1998, f. 12-30-98, cert. ef. 1-1-99; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 13-2002, f. 6-28-02, cert. ef. 7-1-02; BCD 17-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05

## 918-225-0560

### Responsibility of Inspectors

(1) All deputy and special inspectors shall perform boiler, pressure vessel and pressure piping inspections in accordance with the **Boiler and Pressure Vessel Specialty Code** adopted in OAR 918-225-0430 and the following requirements of the division:

(a) For new boilers, the inspector shall verify that the controls and safety devices required by **ASME CSD-1** or other construction codes are installed and function as designed in accordance with manufacturer's instructions;

(b) External boiler inspections shall be performed with the boiler in normal operation. The inspector shall examine all controls, safety devices, water columns and gauge glasses for evidence of tampering and shall verify that all testing has been performed to ensure proper functioning;

(c) Internal boiler inspections shall be performed in a thorough and complete manner. Manways and other inspection openings necessary to perform a particular inspection shall be removed for access to the boiler internals. Water columns, feed water controllers and feed piping shall be inspected internally. The inspector shall visually examine pressure boundary retaining devices, boiler refractory, hangers, clips, boiler tubes and headers and drum internals for damage, corrosion, overheating, welded repairs, feedwater treatment or any detrimental conditions;

(d) The inspector shall explain to the owner or user that any boiler, pressure vessel or pressure piping deficiency requires correction under the **Oregon Boiler Specialty Code**. The inspector shall require conditions not hazardous to health or safety to be corrected within 30 days. The inspector shall require conditions hazardous to health or safety to be corrected prior to operating the equipment. The owner or user of the equipment may apply to the chief inspector for extension of the 30-day correction requirement; and

(e) All inspectors witnessing installation, repair or alteration of boilers, pressure vessels or pressure piping shall verify that the contractor and workers performing the work are appropriately licensed and hold valid permits as required by ORS 480.630.

(2) Failure to comply with subsections (1)(a) through (e) of this rule, or failure of an owner or user to perform a required deficiency correction may cause additional inspections to be performed per ORS 480.570 as directed by the chief inspector.

(3) The responsibilities of process piping inspectors are located in OAR 918-225-0562.

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

Stat. Auth.: ORS 455.030 & 480.545

Stats. Implemented: ORS 480.545, 480.555, 480.560, 480.565 & 480.570

Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 37-1984, f. & ef. 12-4-84; Renumbered from 814-025-0020; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0045; BCD 26-1998, f. 12-30-98, cert. ef. 1-1-99; BCD 4-2003, f. & cert. ef. 3-14-03; BCD 17-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05



# ADMINISTRATIVE RULES

918-225-0660

## Certification of Special Inspectors

(1) An application for special inspector certification shall be filed by an employer described in ORS 480.565(3) using forms provided by the division and submitting the appropriate application fee.

(2) The person to be certified shall meet the experience requirements in OAR 918-225-0650 and shall have passed the National Board of Boiler and Pressure Vessel Inspectors Examination.

(3) An examination covering the Oregon Boiler and Pressure Vessel Law, ORS 480.510 to 480.990 and OAR chapter 918, division 225, the **National Board Inspection Code** and **ASME CSD-1** shall be given by the chief inspector to all special inspector applicants.

(4) Special inspector certifications shall be renewed annually, by paying a renewal fee of \$25 prior to January 1 of each year.

(5) When a special inspector leaves the employment of the employer covered by ORS 480.565, the employer shall notify the division and return the special inspector certification.

(6) Process piping inspectors shall be certified pursuant to OAR 918-225-0665.

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

Stat. Auth.: ORS 455.030 & 480.545

Stats. Implemented: ORS 480.565

Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 27(Temp), f. & ef. 12-31-73; DC 33, f. 5-6-74, ef. 5-25-74; Renumbered from 814-025-0065; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0135; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 4-2003, f. & cert. ef. 3-14-03; BCD 17-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05

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**Adm. Order No.:** BCD 18-2005(Temp)

**Filed with Sec. of State:** 7-12-2005

**Certified to be Effective:** 7-12-05 thru 9-30-05

**Notice Publication Date:**

**Rules Amended:** 918-460-0015

**Subject:** This rulemaking amends Chapter 13 of the 2004 Oregon Structural Specialty Code to adjust lighting needs for structures.

**Rules Coordinator:** Nicole M. Jantz—(503) 373-7438

918-460-0015

## Amendments to the Structural Specialty Code

(1) The Structural Specialty Code is generally readopted every three years coinciding with the national adoption of a nationally recognized Building Code and other referenced supporting nationally recognized codes pursuant to chapter 918, division 8.

(2) Effective October 1, 2004, delete Section 2406.1.2 Wired glass.

(3) Effective April 7, 2005 to September 30, 2005 users of the code may choose between either Chapter 29 of the 2004 Oregon Structural Specialty Code or Chapter 29 of the 1998 Oregon Structural Specialty Code as further amended by the division to include M and E Occupancies in Section 2904.2 Requirements.

(4) Effective July 1, 2005, the following sections of the 2004 OSSC are amended to adjust building code provisions which are in conflict with federal standards.

(a) Amend Section 1109.16 bringing code into compliance with the American Disabilities Act.

(b) Amend Section 1110.5.2 bringing code into compliance with the Fair Housing Act.

(c) Amend Section 1110.6.4.1.2 bringing code into compliance with the Fair Housing Act.

(d) Add new Section 1313.4.2.1 to adjust lighting power density for retail occupancies.

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

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

Stats. Implemented: ORS 447.247, 455.110 & 455.112

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCD 6-1994, f. 2-25-94, cert. ef. 5-1-94; BCD 22-1994, f. 9-28-94, cert. ef. 1-1-95; BCD 31-1994(Temp), f. & cert. ef. 12-23-94; BCD 32-1994, f. & cert. ef. 12-30-94; BCD 2-1995, f. & cert. ef. 2-9-95; BCD 5-1995, f. & cert. ef. 3-15-95; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 6-1996, f. 3-29-96, cert. ef. 4-1-96; BCD 12-1997, f. 9-10-97, cert. ef. 10-1-97; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 24-1998(Temp), f. & cert. ef. 12-1-98 thru 5-29-99; Temporary Rule repealed by BCD 3-1999, f. 3-12-99, cert. ef. 4-1-99; BCD 5-1999, f. 6-17-99, cert. ef. 10-1-99; BCD 12-1999(Temp), f. 9-23-99, cert. ef. 11-1-99 thru 4-28-00; BCD 2-2000 f. 1-14-00, cert. ef. 4-1-00; BCD 20-2000, f. 9-15-00, cert. ef. 10-1-00; BCD 8-2001, f. 7-17-01, cert. ef. 10-1-01; BCD 18-2001, f. 12-21-01, cert. ef. 1-1-02; BCD 14-2003, f. 8-13-03, cert. ef. 10-1-03; BCD 18-2003(Temp) f. & cert. ef. 11-14-03 thru 5-11-04; BCD 5-2004, f. & cert. ef. 4-1-04; BCD 16-2004, f. 9-24-04, cert. ef. 10-1-04; BCD 21-2004, f. & cert. ef. 10-1-04; BCD 9-2005(Temp), f. & cert. ef. 4-7-05 thru 9-30-05; BCD 14-2005, f. & cert. ef. 7-5-05; BCD 18-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05

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

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

**Filed with Sec. of State:** 6-29-2005

**Certified to be Effective:** 9-1-05

**Notice Publication Date:** 6-1-05

**Rules Amended:** 438-007-0020

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

**Rules Coordinator:** Vicky Scott—(503) 378-3308

## 438-007-0020

### Subpoenas; Witness Fees

(1) Whenever a party has requested a hearing, a subpoena may be issued to compel:

(a) Attendance and testimony at a hearing; or

(b) The production of documentary or physical evidence under a witness' control at or before a hearing.

(2) Subpoenas may be issued by an Administrative Law Judge or the attorney of record of a party. Upon request, the Hearings Division shall provide blank subpoenas.

(3) Subpoenas issued on behalf of a party may be served by the party or the party's representative. Service may be made in person or by certified mail or other mail that provides for a receipt signed by the recipient.

(4) Subpoenas shall be served far enough in advance of an appearance to allow the witness or party a reasonable time to comply with the subpoena or to file an objection.

(5) Witness fees and mileage shall be provided at the time the subpoena is served, in the amount provided for in civil actions.

(6) "Individually identifiable health information," as defined in ORCP 55(H)(1)(a), may be obtained through a subpoena under the following procedures:

(a) At the time a subpoena for individually identifiable health information is issued, the party issuing the subpoena must serve a copy of the subpoena to the party or the attorney for the party whose individually identifiable health information is being subpoenaed. Such service shall be as provided in section (3) above.

(b) The subpoena shall provide notice to the person or the person's attorney, if represented, whose individually identifiable health information is being subpoenaed of the extent of the information being sought, and shall describe the procedure for submitting a timely objection to the disclosure of such information. The subpoena shall include the following in prominent or boldface type:

"IF YOU OPPOSE THE DISCLOSURE OF THE INFORMATION INCLUDED IN THIS SUBPOENA, YOU MUST FILE A WRITTEN OBJECTION, WITH THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1280. YOUR OBJECTION MUST BE FILED WITHIN SEVEN (7) CALENDAR DAYS OF THE MAILING DATE OF THIS NOTICE, AND MUST STATE THAT YOU OBJECT TO THE RELEASE OF THE INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION, THE BASIS FOR YOUR OBJECTION, YOUR ADDRESS, AND THE DATE OF YOUR INJURY IF YOU KNOW THE DATE. A COPY OF YOUR LETTER MUST ALSO BE PROVIDED SIMULTANEOUSLY TO THE RECIPIENT OF THE SUBPOENA, AS WELL AS TO THE PARTY ISSUING THE SUBPOENA. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION BOARD TOLL FREE IN OREGON 1-877-311-8061 OR, IN SALEM OR FROM OUTSIDE OREGON, AT (503) 378-3308, OR THE OMBUDSMAN'S OFFICE AT (503) 378-3351, OR TOLL-FREE, (800) 927-1271."

(c) The subpoena must also contain the following certification: "I certify that I mailed a copy of this subpoena to [the person or the person's attorney, if represented] at [address] on [date] by certified mail return receipt requested."

(d) "File," as used in this section, has the same meaning as OAR 438-005-0046.

(e) If the person whose individually identifiable health information is being subpoenaed does not timely object or waives any objection, the recipient of the subpoena shall comply with the subpoena.

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(f) If the recipient of the subpoena receives a timely objection from the party whose individually identifiable health information is being subpoenaed, the recipient shall comply with the subpoena by mailing the information sought to the Workers' Compensation Board, at 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1280.

(g) If the person whose individually identifiable health information is being subpoenaed timely objects, an expedited pre-hearing conference will be conducted under the provisions of ORS 656.283.

(h) A party who receives information under this section is required to disclose that information under OAR 438-007-0015.

Stat. Auth.: ORS 656.726(5)  
Stats. Implemented: ORS 656.283(8), 656.724(4) & 656.726(2)(c)  
Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03; WCB 1-2005, f. 6-29-05, cert. ef. 9-1-05

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**Department of Corrections**  
**Chapter 291**

**Adm. Order No.:** DOC 7-2005

**Filed with Sec. of State:** 7-1-2005

**Certified to be Effective:** 7-1-05

**Notice Publication Date:** 3-1-05

**Rules Amended:** 291-131-0015

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

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

**291-131-0015**

**General**

(1) The functional unit manager or designee will ensure employees responsible for mail room operations are properly trained prior to assignment.

(2) Inmates shall not send, receive, transfer, or possess mail which violates the provisions of these rules.

(3) Inmates shall not send, receive, transfer, or possess mail to or from the victim(s) of their crime(s) of conviction (both past and present), except as authorized in writing by the functional unit manager or designee.

(4) Inmates shall not conduct business transactions by mail without the prior written consent of the functional unit manager or designee.

(5) Excluding weekends and holidays, incoming and outgoing correspondence should be processed within two days of receipt; publications and packages within four days of receipt, unless the mail is being reviewed for possible violations.

(6) All incoming and outgoing mail is subject to inspection or examination. Legal and official mail is subject to inspection or examination as provided in OAR 291-131-0030.

(7) All mail, excluding packages, shall be routed through the U.S. Postal Service, inter-agency or intra-departmental mail systems. Mail may also be sent by other approved mail service providers for packages and special circumstances, if authorized by the functional manager. Other mail service providers includes, but is not limited to, United Parcel Service, U.S. Airborne, Federal Express, approved newspaper delivery. Authorization may vary among Department of Corrections facilities depending upon security concerns, mail room operations and physical layout of the building and grounds.

(8) Inmates shall be permitted to send business mail to officials of the Department of Corrections in Central Administration through the intra-departmental mail system. Inmates shall not be permitted to send mail through the state inter-agency mail system. Inmates shall be permitted to receive mail from state agencies and officials through the inter-agency and intra-departmental mail systems.

(9) Each month an inmate, who in the previous month has not accumulated the cost of five postage paid envelopes (for less than one ounce) in his/her trust account, will be issued five postage paid envelopes by the facility if he/she requests.

**(10) Inmate to Inmate Mail Restriction:**

(a) An inmate may be prohibited from corresponding with another inmate(s) when directed by the Department of Corrections facility functional unit manager or designee, and approved by the Assistant Director of Operations/designee, based on specific circumstances or information which

in their judgment indicates that the inmate has or may use correspondence with the other inmate(s) in order to violate provisions of law, department administrative rules, or to otherwise engage in activity that threatens or impairs the security, good order, or discipline of the facility, inmate rehabilitation, or the health or safety of inmates, staff or the public, or to engage in other activity that threatens or is detrimental to other legitimate penological objectives.

(b) Affected inmate(s) will be notified of the restriction through written directive. A decision to order an inmate-to-inmate mail restriction under these rules 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.: CD 18(Temp), f. & ef. 12-18-73 thru 4-17-74; CD 22, f. 6-27-74, ef. 7-25-74; CD 1-1979, f. & ef. 1-4-79; Renumbered from 291-010-0300; CD 11-1980(Temp), f. & ef. 4-10-80; CD 16-1980(Temp), f. & ef. 4-18-80; CD 28-1980, f. & ef. 8-22-80; CD 22-1983(Temp), f. & ef. 6-3-83; CD 27-1983, f. & ef. 7-11-83; CD 57-1985, f. & ef. 8-16-85; CD 14-1988, f. & cert. ef. 10-7-88 (and corrected 10-25-88); CD 1-1992, f. & cert. ef. 1-29-92; CD 10-1993, f. 5-5-93, cert. ef. 7-1-93; DOC 20-1998, f. 9-22-98, cert. ef. 12-1-98; DOC 23-1998(Temp), f. & cert. ef. 12-23-98 thru 6-21-99; DOC 8-1999, f. 5-24-99, cert. ef. 6-1-99; DOC 20-2001, f. & cert. ef. 12-17-01; DOC 4-2002(Temp), f. & cert. ef. 3-25-02 thru 9-21-02; DOC 13-2002, f. 9-11-02 cert. ef. 9-20-02; DOC 16-2004(Temp), f. & cert. ef. 12-28-04 thru 6-26-05; DOC 7-2005, f. & cert. ef. 7-1-05

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**Adm. Order No.:** DOC 8-2005(Temp)

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

**Certified to be Effective:** 7-7-05 thru 1-3-06

**Notice Publication Date:**

**Rules Adopted:** 291-047-0021

**Rules Amended:** 291-047-0005, 291-047-0010

**Rules Suspended:** 291-047-0020, 291-047-0025

**Subject:** Effective immediately, the Oregon Department of Corrections (ODOC) is temporarily amending, suspending, and adopting rules relating to the ODOC's Mental Health Treatment Program. These rules are necessary in order to implement HB 2141 (2005) relating to the assignment and transfer of ODOC inmates to a state mental hospital listed in ORS 426.010 for evaluation and treatment.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

**291-047-0005**

**Authority, Purpose and Policy**

(1) Purpose: This rule prescribes procedures by which inmates of Department of Corrections facilities may be transferred to a state mental hospital listed in ORS 426.010.

(2) Policy: It is the policy of the Department of Corrections to establish procedures to provide for the best possible evaluation, treatment and return or release to inmates, to and from a state mental hospital in accordance with ORS 430.041(1), 179.473, 179.478, 179.479, and HB 2141 (2005).

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075  
Hist.: CD 38, f. 1-28-77, ef. 2-1-77; CD 10-1979, f. & ef. 4-23-79; Renumbered from 291-40-250; CD 20-1979(Temp), f. & ef. 10-23-79; CD 9-1980, f. & ef. 4-1-80; CD 1-1983(Temp), f. & ef. 1-4-83; CD 14-1983, f. & ef. 4-1-83; CD 14-1984, f. & ef. 7-20-84; CD 26-1985, f. & ef. 8-16-85; CD 1-1994, f. 1-10-94, cert. ef. 1-18-94; DOC 5-2000, f. & cert. ef. 1-21-00; DOC 8-2005(Temp), f. & cert. ef. 7-7-05 thru 1-3-06

**291-047-0010**

**Definitions**

(1) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(2) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, probation, or post-prison supervision status.

(3) Mentally Ill Inmate: An inmate who, because of a mental disorder, is one or more of the following:

(a) Dangerous to self or others.

(b) Unable to provide for basic personal needs and is not receiving such care as is necessary for health or safety.

(c) An inmate who:

(A) Is chronically mentally ill, as defined in ORS 426.495;

(B) Within the previous three years, has twice been placed in a hospital or approved inpatient facility by the division under ORS 426.060;

(C) Is exhibiting symptoms or behavior substantially similar to those that preceded and led to one or more of the hospitalizations or inpatient placements referred to in subparagraph (B) above; and

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(D) Unless treated, will continue, to a reasonable medical probability, to physically or mentally deteriorate so that the inmate will become a person described under either or both subparagraph (A) or (B) above.

(4) Mentally Retarded Inmate: An inmate who, because of mental retardation is:

(a) Dangerous to self or others; or

(b) Unable to provide for basic personal needs and not receiving care as is necessary for the health, safety or habilitation of the person; and

(c) Affected by significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. Persons of borderline intelligence may be considered mentally retarded if there is also serious impairment of adaptive behavior. Definitions and classifications shall be consistent with the "Manual on Terminology and Classification in Mental Retardation" of the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(5) State Mental Hospital: As defined in ORS 426.010. Except as otherwise ordered by the Department of Human Services pursuant to ORS 179.325, the Oregon State Hospital in Salem, Marion County, and the Eastern Oregon Psychiatric Center in Pendleton, Umatilla County, shall be used as state hospitals for the care and treatment of mentally ill persons who are assigned to the care of such institutions by the department or who have previously been committed to such institutions.

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

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075  
Hist.: CD 38, f. 1-28-77, ef. 2-1-77; CD 10-1979, f. & ef. 4-23-79; Renumbered from 291-40-255; CD 20-1979(Temp), f. & ef. 10-23-79; CD 9-1980, f. & ef. 4-1-80; CD 1-1984(Temp), f. & ef. 2-17-84; CD 14-1984, f. & ef. 7-20-84; CD 26-1985, f. & ef. 8-16-85; CD 1-1994, f. 1-10-94, cert. ef. 1-18-94; DOC 5-2000, f. & cert. ef. 1-21-00; DOC 8-2005(Temp), f. & cert. ef. 7-7-05 thru 1-3-06

## 291-047-0020

### Administrative Transfer

(1) The functional unit manager for mental health services for the Department of Corrections may request the superintendent of an MHDDSD institution to accept a mentally ill or mentally retarded inmate in administrative transfer. Unless the inmate voluntarily consents, no treatment or psychotropic drug shall be administered except when in the judgment of the attending physician, treatment or medication is considered necessary to preserve the life of the inmate.

(2) In making the determination of eligibility of transfer, the functional unit manager for the Department of Corrections facility shall have the inmate evaluated. If, based on this evaluation and other pertinent information, the functional unit manager for mental health services determines that a transfer is appropriate, the functional unit manager may make a referral to the superintendent of the appropriate MHDDSD institution. In making a recommendation for administrative transfer, the functional unit manager of the Department of Corrections facility that houses the inmate may stipulate certain conditions governing transfer.

(3) If space is available and the superintendent of the MHDDSD institution approves, the inmate shall be administratively transferred to the MHDDSD institution.

(4) Within seven days after administrative transfer under this section, the superintendent of the MHDDSD institution or designee shall cause a psychiatric examination to be conducted to determine if there is probable cause to believe the inmate is a mentally ill person under ORS 426.005(1)(d), or mentally retarded under ORS Chapter 427. If the inmate is determined to be an alleged mentally ill or mentally retarded person, the superintendent of the MHDDSD institution or designee shall cause a two-physician hold to be filed with the judge of the circuit court in the county in which the MHDDSD institution is located. A pre-commitment investigation will be conducted within five judicial days by the county in which the MHDDSD institution is located.

(5) An administrative transfer shall not exceed 15 days from the date of transfer. If, at the expiration of 15 days, the superintendent of the MHDDSD institution has not petitioned the court for a commitment hearing pursuant to ORS 426.070 or Chapter 427, the superintendent of the MHDDSD institution may request the Department of Corrections to transport the inmate back to the corrections facility.

(6) Physical transportation of the inmate from the Department of Corrections facility to the MHDDSD institution and return shall be the responsibility of the Department of Corrections.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075

Hist.: CD 38, f. 1-28-77, ef. 2-1-77; CD 10-1979, f. & ef. 4-23-79; Renumbered from 291-040-0265; CD 20-1979(Temp), f. & ef. 10-23-79; CD 9-1980, f. & ef. 4-1-80; CD 36-

1980(Temp), f. & ef. 12-23-80, CD 6-1981, f. & ef. 4-3-81; CD 26-1985, f. & ef. 8-16-85; CD 1-1994, f. 1-10-94, cert. ef. 1-18-94; DOC 5-2000, f. & cert. ef. 1-21-00; Suspended by DOC 8-2005(Temp), f. & cert. ef. 7-7-05 thru 1-3-06

## 291-047-0021

### Administrative Transfers (Mentally Ill Inmates)

(1) The Administrator of ODOC's Counseling and Treatment Services Unit/designee may request the superintendent of a state mental hospital listed in ORS 426.010 to accept a transfer of a mentally ill inmate to a state mental hospital pursuant to these rules.

(2) An inmate may be transferred to a state mental hospital for stabilization and evaluation for mental health treatment for a period not to exceed 30 days unless the transfer is extended pursuant to a hearing required by paragraph (6) of this subsection.

(3) If space is available and the superintendent of the state mental hospital approves, the inmate shall be transferred.

(4) The Department of Human Services shall provide for an administrative commitment hearing for administrative commitment or extension of the transfer of the inmate if:

(a) The Department of Human Services determines that administrative commitment for treatment for a mental illness is necessary or advisable or that the Department of Human Services needs more than 30 days to stabilize or evaluate the inmate; and

(b) The inmate does not consent to the administrative commitment or an extension of the transfer.

(c) The administrative commitment hearing process shall, at a minimum, include the following procedures:

(A) Written notice to the inmate that an administrative commitment to a state mental hospital or an extension of the transfer is being considered. The notice required by this subparagraph must be provided far enough in advance of the hearing to permit the inmate to prepare for the hearing.

(B) Disclosure to the inmate, at the hearing, of the evidence that is being relied upon for the administrative commitment or the extension of the transfer.

(C) An opportunity, at the hearing, for the inmate to be heard in person and to present documentary evidence.

(D) An opportunity, at the hearing, for the inmate to present the testimony of witnesses and to confront and cross-examine witnesses called by the state. The opportunity required by this subparagraph may be denied upon a finding by the decision maker of good cause for not permitting the inmate to present the testimony of witnesses or confront or cross-examine witnesses called by the state.

(E) An independent decision maker for the hearing.

(F) A written statement by the decision maker of the evidence relied upon by the decision maker and the reasons for administratively committing the inmate or extending the transfer.

(G) A qualified and independent assistant for the inmate to be provided by the state if the inmate is financially unable to provide one.

(H) Effective and timely notice of the procedures required by subparagraphs (A) to (G) of this rule.

(d) Provide that an inmate may not be administratively committed involuntarily unless the independent decision maker finds by clear and convincing evidence that the inmate or is a mentally ill person as defined in ORS 426.005.

(5) The duration of an administrative commitment pursuant to an administrative commitment hearing be no more than 180 days unless the administrative commitment is renewed in a subsequent administrative commitment hearing.

(6) Notwithstanding this paragraph, an administrative commitment may not continue beyond the term of incarceration to which the inmate was sentenced.

(7) An inmate who is transferred to state mental hospital for mental health evaluation and treatment has the rights to which persons are entitled under ORS 179.485.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075  
Hist.: DOC 8-2005(Temp), f. & cert. ef. 7-7-05 thru 1-3-06

## 291-047-0025

### Involuntary Assignment or Involuntary Transfer

(1) If an inmate is transferred to an MHDDSD institution by administrative transfer and is considered in need of treatment by the superintendent of the MHDDSD institution the superintendent of the MHDDSD institution shall be responsible for initiating involuntary court commitment procedures. The MHDDSD institution shall provide the court an investigation report comparable to that required under ORS 426.070 and make a recommendation to the court.



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(2) If the court commits the inmate who is mentally ill or mentally retarded to the MHDDSD, the inmate shall remain in an MHDDSD institution.

(3) If the court does not commit the inmate to the MHDDSD, the inmate shall be returned immediately by the Department of Corrections to the Department of Corrections facility from which the inmate came.

(4) In accordance with ORS 179.478(2), if an inmate of a Department of Corrections facility is determined by the courts to be mentally retarded, that person shall be committed and transferred to an MHDDSD institution designated by the MHDDSD, as soon as space in an appropriate unit is available, and any institution sentence to the Department of Corrections shall be terminated.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075

Hist.: CD 38, f. 1-28-77, ef. 2-1-77; CD 10-1979, f. & ef. 4-23-79; Renumbered from 291-040-0270; CD 20-1979(Temp), f. & ef. 10-23-79; CD 9-1980, f. & ef. 4-1-80; CD 14-1983, f. & ef. 4-1-83; CD 26-1985, f. & ef. 8-16-85; CD 1-1994, f. 1-10-94, cert. ef. 1-18-94; DOC 5-2000, f. & cert. ef. 1-21-00; Suspended by DOC 8-2005(Temp), f. & cert. ef. 7-7-05 thru 1-3-06

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## Department of Environmental Quality Chapter 340

**Adm. Order No.:** DEQ 5-2005

**Filed with Sec. of State:** 7-1-2005

**Certified to be Effective:** 7-1-05

**Notice Publication Date:** 12-1-04

**Rules Amended:** 340-045-0033, 340-045-0070, 340-045-0075

**Subject:** The Department of Environmental Quality (DEQ) has amended its rules to renew the 700-J NPDES General Permit (now 700-PM). This permit covers discharges from suction dredge operations used to recover precious metals and minerals from stream bed sediments.

The renewal clarifies dredge operation and work practices, clarifies the designation of streams where dredging is restricted, requires turbidity limits and monitoring only for dredges with suction hoses that have an inside diameter of 4 inches or greater, includes new annual fees and allows the Oregon Department of State Lands to potentially administer the permit in the future, as a streamlining measure.

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

### 340-045-0033

#### General Permits

(1) The Director may issue general permits for certain categories of minor discharge sources or minor activities where individual NPDES or WPCF permits are not necessary to adequately protect the environment. Before the Director can issue a general permit, the following conditions must be met:

(a) There must be several minor sources or activities that involve the same or substantially similar types of operations.

(b) The sources or activities must have the potential to discharge or dispose of the same or similar types of wastes.

(c) The general permit must require the same or similar monitoring requirements, effluent limitations and operating conditions for the categories.

(d) The category of sources or activities would be more appropriately controlled under a general permit than an individual permit.

(e) The Commission has adopted the general permit into rule by reference.

(2) General permits issued after the effective date of this rule will specify the following:

(a) The requirements to obtain coverage under a general permit, including application requirements and application submittal deadlines. The Department may determine that submittal of an application is not necessary after evaluating the type of discharge, potential for toxic and conventional pollutants in the discharge, expected discharge volume, availability of other means to identify dischargers, and estimated number of dischargers to be covered by the permit. The Department's evaluation must be provided in the public notice for the general permit.

(b) The process used by the Department to notify a person that coverage under a general permit has been obtained and the discharge or activity is authorized.

(3) Although general permits may include activities throughout the state, they may also be restricted to more limited geographical areas.

(4) Prior to issuing a general permit, the Department will follow the public notice and participation procedures outlined in OAR 340-045-0027, 340-045-0035(3), and ORS 183.325 to 183.410. In addition the Department will make a reasonable effort to mail notices of pending actions to those persons known by the Department who are likely to be covered by the general permit.

(5) Any person operating a discharge source or conducting an activity described in a general permit must apply for coverage under the general permit, unless the general permit does not require submission of an application pursuant to (2)(a) of this rule or the source or activity is specifically covered by an individual NPDES or WPCF permit. Any person seeking coverage under a general permit must submit an application as required under the terms of the applicable NPDES or WPCF general permit. If application requirements are not specified in the general permit, procedures in OAR 340-045-0030 or 340-071-0162, whichever is applicable, must be followed. A person who fails to submit application in accordance with the terms of the general permit, OAR 340-045-0030 or 340-071-0162, whichever is applicable, is not authorized to conduct the activity described in the permit.

(6) Any person required to have coverage under a general permit must pay permit fees as required in OAR 340-045-0070 to 340-045-0075 or 340-071-0140 to obtain and maintain coverage under that permit.

(7) Any permittee covered by an individual NPDES or WPCF permit may request that the individual permit be canceled or allowed to expire, and that it be covered by a general permit if its discharge or activity may be covered by an existing general permit. As long as the permittee is covered by an individual NPDES or WPCF permit, the conditions and limitations of the individual permit govern, until such time as it is canceled or expires.

(8) Any person not wishing to be covered by a general permit may make application for an individual permit in accordance with OAR 340-045-0030 or 340-071-0162, whichever is applicable.

(9) The Director may revoke coverage and authorization under a general permit pursuant to OAR 340-045-0060 as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit. Any interested person may petition the Director to take action under this section. Cases where an individual permit may be required include the following:

(a) The discharge or activity is a significant contributor of pollution or creates other environmental problems;

(b) The permittee is not in compliance with the terms and conditions of the general permit, submitted false information, or is in violation of any applicable law;

(c) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;

(d) For NPDES general permits, effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit; or

(e) Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

(10) The following general permits are adopted by reference in this rule and available for review at the Department:

(a) NPDES 200-J, Filter backwash (issued August 29, 1997);

(b) NPDES 500-J, Boiler blowdown (issued August 29, 1997);

(c) WPCF 600, Offstream placer mining (issued April 9, 1997);

(d) NPDES 700-PM, Suction dredges (issued July 5, 2005);

(e) WPCF 800, Confined animal feeding operations (issued August 8, 1990);

(f) NPDES 900-J, Seafood processing (issued June 7, 1999);

(g) WPCF 1000, Gravel mining (issued July 26, 2002);

(h) NPDES 1200-A, Storm water runoff from sand, gravel & non-metallic quarrying & mining in Standard Industrial Classification (SIC) 14, asphalt mix batch plants, and concrete batch plants. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR §122.26(g); see permit for details. (issued July 26, 2002);

(i) NPDES 1200-C, Storm water runoff from construction activities, including clearing, grading, and excavation, and stockpiling that disturbs five or more acres, including activities that will disturb five or more acres over time as part of a larger common plan of development; effective

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December 1, 2002, construction activities that disturb one or more acre are covered (issued February 20, 2001);

(j) NPDES 1200-CA, Government agencies responsible for storm water runoff from construction activities that disturbs five or more acres; effective December 1, 2002, construction activities that disturb one or more acres are covered (issued February 20, 2001);

(k) NPDES 1200-COLS, Storm water runoff in the Columbia Slough watershed from industrial activities listed in 8(l) of this rule (issued December 22, 1999);

(l) NPDES 1200-Z, Storm water runoff from: Warehousing in SIC 4221-4225; Food processing in SIC 20; Landfills, land app. sites; Heavy industrial in SIC 28, 29, 30, 31, 32, 33 & steam electric power generating (includes coal/hogged fuel handling); Light mfg. in SIC 34, 35, 36, 37, 38 & 39 includes ship & boat building/repair; Printing in SIC 27; Textile & apparel mfg. in SIC 22 & 23; Transportation in SIC 40, 41, 42, 43, 44, 45 & 5171; Wood products mfg. in SIC 24 & 25; Metal scrap yards, battery reclaimers & auto salvage yards in SIC 5015 & 5093; Hazardous waste treatment, storage, & disposal facilities. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR §122.26(g); see permit for details. (issued July 26, 2002);

(m) NPDES 1300-J, Oily storm water runoff and oil/water separators (issued January 11, 2000);

(n) WPCF 1400-A, Seasonal food processing & wineries, less than 25,000 gallons/day (issued August 22, 2000);

(o) WPCF 1400-B, Other food processing, less than 25,000 gallons/day (issued August 22, 2000);

(p) NPDES 1500-A, Petroleum hydrocarbon cleanups discharged to surface waters (issued August 22, 2000);

(q) WPCF 1500-B, Petroleum hydrocarbon cleanups (issued August 22, 2000);

(r) NPDES 1700-A, Vehicle and equipment wash water discharged to surface waters (issued March 5, 1998);

(s) WPCF 1700-B, Vehicle and equipment wash water (issued March 5, 1998);

(t) NPDES 1900-J, Non-contact geothermal heat exchange (issued September 11, 1997);

(u) NPDES 01, Confined animal feeding operations (issued October 1, 2003).

Stat. Auth.: ORS 468.020, 468B.020 & 468B.035

Stats. Implemented: ORS 468.065, 468B.015, 468B.035 & 468B.050

Hist.: DEQ 28-1980, f. & ef. 10-27-80; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 13-2001, f. & cert. ef. 10-16-01; DEQ 8-2002, f. & cert. ef. 8-9-02; DEQ 14-2002, f. & cert. ef. 10-16-02; DEQ 12-2003, f. & cert. ef. 9-2-03; DEQ 5-2005, f. & cert. ef. 7-1-05

## 340-045-0070

### Permit Fees

(1) Except for a person assigned to the 700-PM general permit, a person required to have a WPCF or NPDES permit is subject to a three-part fee consisting of the applicable uniform non-refundable filing fee, application processing fee, and annual compliance determination fee in OAR 340-045-0075.

(a) The amount equal to the filing fee, application processing fee, and the first year's annual compliance determination fee must be submitted with any application for a new NPDES or WPCF permit.

(b) The amount equal to the filing fee and application processing fee, if applicable, must be submitted with any application for renewal or modification of a NPDES or WPCF permit.

(c) When a governmental entity has an agreement with the department to assist with implementation of a general permit, the department may in that agreement lower the general permit fees established in OAR 340-045-0075 and allow the governmental entity to collect the fee for the department and retain a portion of the fee for its services.

(2) The applicable annual compliance determination fee in OAR 340-045-0075(7) must be paid for each year a disposal system is in operation or during which a discharge to public waters occurs.

(a) The fee period corresponds with the state's fiscal year (July 1 through June 30) and must be paid annually by the date specified by the Department.

(b) Any annual compliance determination fee submitted as part of an application for a new NPDES or WPCF permit applies to the fiscal year the permitted facility is put into operation.

(c) For the first fee period a facility is placed into operation, the full annual compliance determination fee applies if the facility is placed into operation on or before May 1. No annual compliance determination fee

applies for that initial year if the facility is placed into operation after May 1.

(d) The Director may alter the due date for the annual compliance determination fee upon receipt of a justifiable request from a permittee. The Commission may reduce or suspend the annual compliance determination fee if a hardship is demonstrated.

(3) A filing fee and application processing fee are not required for modification of an existing, unexpired permit if the Department initiates the modification and determines the modification does not require refiling or Department review of an application, plans, or specifications.

(4) After the Department accepts an application for filing, the filing fee is non-refundable.

(5) The application processing fee submitted with an application may be refunded in whole or in part if the Department determines that:

(a) A permit is not required; or

(b) The wrong application was filed.

(6) All fees must be made payable to the Department of Environmental Quality or the Department's agent.

(7) A person assigned to the 700-PM general permit must pay either an annual fee or an optional 5-year permit registration fee according to the schedule provided in OAR 340-045-0075. The applicable fee must be submitted with the permit application and is non-refundable unless the Department or the Department's agent determines that the permittee cannot be assigned to the general permit. Fees must be made payable to the Department of Environmental Quality. An annual fee must be paid at the time of application, and on or before June 1 for each following year that the permit is valid.

Stat. Auth.: ORS 454.625, 454.745, 468.020, 468B.020 & 468B.035

Stats. Implemented: ORS 454.745, 468.065, 468B.015, 468B.035 & 468B.050

Hist.: DEQ 113, f. & ef. 5-10-76; DEQ 129, f. & ef. 3-16-77; DEQ 31-1979, f. & ef. 10-1-79; DEQ 18-1981, f. & ef. 7-13-81; DEQ 12-1983, f. & ef. 6-2-83; DEQ 27-1994, f. & cert. ef. 11-15-94; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 7-2004, f. & cert. ef. 8-3-04; DEQ 5-2005, f. & cert. ef. 7-1-05

## 340-045-0075

### Permit Fee Schedule

(1) The fee schedule for onsite sewage disposal system permits, including WPCF permits, is found in OAR chapter 340, division 071.

(2) For permits administered by the Oregon Department of Agriculture, the following fees are applicable until superseded by a fee schedule established by the Oregon Department of Agriculture.

(a) WPCF General Permits #800 for Confined Animal Feeding Operations Filing Fee — \$50;

(b) Other General Permits:

(A) Filing Fee — \$50;

(B) New Applications — \$235;

(C) Permit Renewals — \$35;

(D) Annual Compliance Determination Fee — \$275.

(c) Individual Permits:

(A) Filing Fee — \$50;

(B) New Applications — \$6,280;

(C) Permit Renewals (including request for effluent limit modifications) — \$3,140;

(D) Permit Renewals (without request for effluent limit modifications) — \$1,416;

(E) Permit Modifications (involving increase in effluent limit modifications) — \$3,140;

(F) Permit Modifications (not involving an increase in effluent limitations) — \$500;

(G) Annual Compliance Determination Fee for dairies and other confined feeding operations — \$705;

(H) Annual Compliance Determination Fee for facilities not elsewhere classified with disposal of process wastewater — \$1,885;

(I) Annual Compliance Determination Fee for facilities not elsewhere classified that dispose of non-process wastewater (e.g., small cooling water discharges, boiler blowdown, filter backwash, log ponds) — \$1,180.

(d) Annual Compliance Determination Fee for facilities that dispose of wastewater only by evaporation from watertight ponds or basins — \$705.

(3) The Department must consider the following criteria when classifying a facility for determining applicable fees.

NOTE: Different classifications for NPDES-permitted facilities are used for reporting to the Environmental Protection Agency.

(a) Major industries:

(A) Discharges large biochemical oxygen demand loads; or

(B) Is a large metals facility; or

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- (C) Has significant toxic discharges; or
- (D) Has a treatment system that will have a significant adverse impact on the receiving stream if not operated properly; or
- (E) Any other industry that the Department determines needs special regulatory control.

(b) *Major domestic:*

- (A) Serves more than 10,000 people; or
- (B) Serves industries that can have a significant impact on the treatment system.

(c) *Minor domestic (see OAR 340-045-0075(7)(a) for descriptions of domestic categories):*

- (A) Does not meet major domestic qualifying factors; or
- (B) Is a facility in categories Da or Db and discharges to surface waters; or
- (C) Is a facility in categories E or F that does not discharge to surface waters and is under a Water Pollution Control Facilities permit.

(4) **Filing Fee.** Unless waived by this rule, a filing fee of \$60 must accompany any application for issuance, renewal, modification, or transfer of a NPDES permit or WPCF permit, including registration for a General Permit pursuant to OAR 340-045-0033 and request for a Special Permit pursuant to OAR 340-014-0050. This fee is non-refundable and is in addition to any other applicable application processing fee or annual compliance determination fee. Filing fees are waived for the following facilities:

- (a) Gold mining suction dredges that qualify for General Permit 700-PM;
- (b) Small gold mining operations that qualify for General Permit 600 and can process no more than five cubic yards of material per day.

(5) **Application Processing Fee.** Unless waived by this rule, the applicable application processing fee in this section must be submitted with each application. The amount of the fee is based on the type of facility and the required action.

(a) *New Applications:*

- (A) Major industries — \$37,680;
- (B) Minor industries — \$7,535;
- (C) Major domestic — \$24,000;
- (D) Minor domestic:
  - (i) Categories Da, Db — \$4,800;
  - (ii) Category E — \$2,400;
  - (iii) Category F — \$600;
  - (iv) Agricultural — \$7,535.
- (E) NPDES Phase II Small MS4 Permit — \$280.

(b) *Permit Renewals (including request for effluent limit modification):*

- (A) Major industries — \$18,840;
- (B) Minor industries — \$3,765;
- (C) Major domestic — \$12,000;
- (D) Minor domestic:
  - (i) Categories Da, Db — \$2,400;
  - (ii) Category E — \$1,200.
- (E) Agricultural — \$3,765.

(c) *Permit Renewals (without request for effluent limit modification):*

- (A) Major industries — \$9,420;
- (B) Minor industries — \$1,415;
- (C) Major domestic — \$6,000;
- (D) Minor domestic:
  - (i) Categories Da, Db — \$900;
  - (ii) Category E — \$600;
  - (iii) Category F — \$240.
- (E) Agricultural — \$1,415;
- (F) NPDES Phase II Small MS4 Permit — \$40.

(d) *Permit Modifications (involving increase in effluent limitations):*

- (A) Major industries — \$18,840;
- (B) Minor industries — \$3,765;
- (C) Major domestic — \$12,000;
- (D) Minor domestic:
  - (i) Categories Da, Db — \$2,400;
  - (ii) Category E — \$1,200.
- (E) Agricultural — \$3,765.

(e) *Permit Modifications (not involving an increase in effluent limits):*

All categories — \$600.

(f) *Special WPCF Permits issued pursuant to OAR 340-045-0061 — \$300.*

(g) *Modifications of septage alkaline stabilization facilities permits — \$240.*

(h) *New General Permits by permit number:*

- (A) 100, 200, 400, 500, 600 (over 1,500 cubic yards per year), 900, 1000, 1400-A — \$95;
- (B) 300, 1300, 1400-B, 1500, 1600 — \$185;
- (C) All other 1200, 1700 — \$280;
- (D) Others not elsewhere specified — \$280;
- (E) The following fees are required in addition to the fees in paragraphs (5)(h)(A) through (D) of this subsection when the activities are required for the application review:

(i) Disposal system plan review — \$375;

(ii) Site inspection and evaluation — \$940.

(i) *Renewal of General Permits as listed in subsection (2)(h) of this rule — \$40;*

(j) *Application processing fees described in subsections (2)(h) and (i) of this rule are waived for the following facilities:*

(A) Small gold mining operations that qualify for General Permit 600 and process no more than five cubic yards of material per day or less than 1,500 cubic yards of material per year.

(B) Gold mining suction dredges that qualify for General Permit 700-PM.

(6) **Technical Activities Fee.** A permittee must pay a fee for NPDES and WPCF permit-related technical activities. A fee will be charged for initial submittal of engineering plans and specifications. Fees will not be charged for revisions and resubmittals of engineering plans and specifications or for facilities plans, design studies, reports, change orders, or inspections. The fee is as follows:

(a) New or substantially modified sewage treatment facility — \$5,520;

(b) Minor sewage treatment facility modifications and pump stations — \$600;

(c) Pressure sewer system or major sewer collection system expansion — \$420;

(d) Minor sewer collection system expansion or modification — \$120;

(e) New or substantially modified water pollution control facilities using alkaline agents to stabilize septage — \$600.

(7) **Annual Compliance Determination Fee Schedule.** Unless waived by this rule, annual compliance determination fees are as follows:

(a) *Domestic Waste Sources — Annual compliance determination fee is based on dry weather design flow, population served by facility, type of facility, and applicable special fees as follows:*

(A) Category A1: Sewage Disposal — 50 MGD or more — \$50,890;

(B) Category A2: Sewage Disposal — At least 25 MGD but less than 50 MGD — \$29,410;

(C) Category A3: Sewage Disposal — At least 10 MGD but less than 25 MGD — \$13,220;

(D) Category Ba: Sewage Disposal — At least 5 MGD but less than 10 MGD — \$8,040;

(E) Category Bb: Sewage Disposal — At least 5 MGD but less than 10 MGD — Systems where treatment occurs in lagoons that discharge to surface waters — \$3,680;

(F) Category C1a: Sewage Disposal — At least 2 MGD but less than 5 MGD — \$5,010;

(G) Category C1b: Sewage Disposal — At least 2 MGD but less than 5 MGD — Systems where treatment occurs in lagoons that discharge to surface waters — \$2,190;

(H) Category C2a: Sewage Disposal — At least 1 MGD but less than 2 MGD — \$3,010;

(I) Category C2b: Sewage Disposal — At least 1 MGD but less than 2 MGD — Systems where treatment occurs in lagoons that discharge to surface waters — \$1,270;

(J) Category Da: Sewage Disposal — Less than 1 MGD and not otherwise categorized under category E — \$1,145;

(K) Category Db: Sewage Disposal — Less than 1 MGD — Systems where treatment occurs in lagoons that discharge to surface waters that are not otherwise categorized under Category E — \$750;

(L) Category E: Sewage Disposal systems where treatment is limited to lagoons that do not discharge to surface waters — \$720;

(M) Category F: Septage alkaline stabilization facilities — \$240;

(N) Category G: Sources determined by the Department to administer a pretreatment program pursuant to federal pretreatment program regulations (40 CFR, Part 403; January 28, 1981) must pay an additional \$1,200 per year plus \$400 for each significant industrial user specified in their annual report for the previous year;



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(O) Category H: Population Based Fee — All permittees must pay an annual fee computed as follows: population served by the facility multiplied by a rate of 0.09645.

(b) *Industrial, Commercial and Agricultural Sources (For multiple sources on one application select only the source with highest fee.):*

(A) Major pulp, paper, paperboard, hardboard, and other fiber pulp-ing industry — \$11,300;

(B) Major sugar beet processing, potato and other vegetable process-ing, and fruit processing industry — \$11,300;

(C) Seafood Processing Industry:

(i) Bottom fish, crab, or oyster processing — \$1,270;

(ii) Shrimp processing — \$1,270;

(iii) Salmon or tuna processing — \$2,260;

(iv) Surimi processing — \$2,260.

(D) Electroplating industry (excludes facilities that do anodizing only):

(i) Rectifier output capacity of 15,000 amps or more — \$11,300;

(ii) Rectifier output capacity of less than 15,000 amps but more than 5000 amps — \$5,650.

(E) Primary Aluminum Smelting — \$11,300;

(F) Primary smelting or refining of non-ferrous metals using sand chlorination separation facilities — \$11,300;

(G) Primary smelting or refining of ferrous and non-ferrous metals not elsewhere classified above — \$5,650;

(H) Alkalies, chlorine, pesticide, or fertilizer manufacturing with dis-charge of process waste waters — \$11,300;

(I) Petroleum refineries with a capacity in excess of 15,000 barrels per day discharging process wastewater — \$11,300;

(J) Cooling water discharges in excess of 20,000 BTU/sec — \$5,650;

(K) Milk products processing industry that processes in excess of 250,000 pounds of milk per day — \$11,300;

(L) Major mining operations (over 500,000 cubic yards per year) — \$11,300;

(M) Minor mining or processing operations:

(i) Medium (100,000 to 500,000 cubic yards per year) mechanical processing — \$3,765;

(ii) Medium using froth flotation — \$5,650;

(iii) Medium using chemical leaching — \$7,535;

(iv) Small (less than 100,000 cubic yards per year) mechanical pro-cessing — \$940;

(v) Small using froth flotation — \$1,880;

(vi) Small using chemical leaching — \$3,765.

(N) All facilities not elsewhere classified with disposal of process wastewater — \$2,260;

(O) All facilities not elsewhere classified that dispose of non-process wastewater (e.g., small cooling water discharges, boiler blowdown, filter backwash, log ponds) — \$1,415;

(P) Dairies and other confined feeding operations on individual per-mits — \$845;

(Q) All facilities that dispose of wastewater only by evaporation from watertight ponds or basins — \$845;

(R) General permits, as listed under paragraphs (5)(h)(A) through (D) of this rule — \$330, except as follows:

(i) 1400-A — \$185;

(ii) Annual compliance determination fees are waived for gold mining activities assigned to General Permits 600 and 700.

(c) *Storm Water: NPDES Phase II Small MS4 permit — \$330.*

(8) NPDES General Permit 700-PM — \$25 for each year of registra-tion or operator may prepay \$100 for 5 years of registration under this per-mit.

Stat. Auth.: ORS 468.020, 468B.020 & 468B.035

Stats. Implemented: ORS 468.065, 468B.015, 468B.035 & 468B.050

Hist.: DEQ 113, f. & ef. 5-10-76; DEQ 129, f. & ef. 3-16-77; DEQ 31-1979, f. & ef. 10-1-79; DEQ 18-1981, f. & ef. 7-13-81; DEQ 12-1983, f. & ef. 6-2-83; DEQ 9-1987, f. & ef. 6-3-87; DEQ 18-1990, f. & cert. ef. 6-7-90; DEQ 10-1991, f. & cert. ef. 7-1-91; DEQ 9-1992, f. & cert. ef. 6-5-92; DEQ 10-1992, f. & cert. ef. 6-9-92; DEQ 30-1992, f. & cert. ef. 12-18-92; DEQ 20-1994, f. & cert. ef. 10-7-94; DEQ 4-1998, f. & cert. ef. 3-30-98; Administrative correction 10-22-98; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 7-2004, f. & cert. ef. 8-3-04; DEQ 5-2005, f. & cert. ef. 7-1-05

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**Adm. Order No.:** DEQ 6-2005

**Filed with Sec. of State:** 7-11-2005

**Certified to be Effective:** 7-11-05

**Notice Publication Date:** 3-1-05

**Rules Amended:** 340-220-0030, 340-220-0040, 340-220-0050

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

Administrative Fee - from \$318 to 327

Simple Modification - from \$1,272 to 1,307

Moderate Modification - from \$9,536 to 9,804

Complex Modification - from \$19,073 to 19,607

Ambient Air Monitoring - from \$2,543 to 2,614

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

## 340-220-0030

### Annual Base Fee

The Department will assess an annual base fee of \$3,268 for each source subject to the Oregon Title V Operating Permit program. The fee covers the period from November 15 of the current calendar year to November 14 of the following year.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2580; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05

## 340-220-0040

### Emission Fee

(1) The Department will assess an emission fee of \$38.08 per ton to each source subject to the Oregon Title V Operating Permit Program.

(2) The emission fee will be applied to emissions from the previous calendar year based on the elections made according to OAR 340-220-0190.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2590; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05

## 340-220-0050

### Specific Activity Fees

The Department will assess specific activity fees for an Oregon Title V Operating Permit program source as follows:

(1) Existing Source Permit Revisions:

(a) Administrative\* — \$327;

(b) Simple — \$1,307;

(c) Moderate — \$9,804;

(d) Complex — \$19,607.

(2) Ambient Air Monitoring Review — \$2,614.

\*includes revisions specified in OAR 340-218-0150(1)(a) through (g). Other revisions specified in OAR 340-218-0150 are subject to simple, moderate or complex revision fees.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2600; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05

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**Adm. Order No.:** DEQ 7-2005

**Filed with Sec. of State:** 7-12-2005

**Certified to be Effective:** 7-12-05

**Notice Publication Date:** 1-1-04

**Rules Amended:** 340-200-0040, 340-256-0010, 340-256-0100, 340-256-0130, 340-256-0300, 340-256-0310, 340-256-0340, 340-256-0350, 340-256-0380, 340-256-0390

**Subject:** The Oregon Department of Environmental Quality (DEQ) will phase-out the Enhanced test for 1981-95 model year vehicles in the Portland area Vehicle Inspection Program by January 2007 and replace the Enhanced test with a Basic test for these model year vehicles. The Enhanced test has been used by DEQ since September 1997. This change will have no effect on the Medford area vehicle

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inspections since Enhanced testing was never implemented in Medford.

The Enhanced test phase-out will reduce testing costs while maintaining good air quality. We are able to achieve this cost savings due to the effectiveness of a test method DEQ introduced in December 2000 called the On-Board Diagnostic (OBD) test and due to the OBD system itself that keeps these vehicles clean by very precisely controlling emissions-related operating parameters. The OBD system is only present on 1996 and newer model year vehicles which now make up about 50 percent of the Portland area vehicles. The number of OBD vehicles is forecast to grow to 75 percent by January 2007 when the proposed Enhanced test phase-out is scheduled for completion.

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

To request additional information, please contact Jerry Coffey at the Department of Environmental Quality (DEQ), Vehicle Inspection Program, 1240 SE 12th Avenue, Portland, OR 97214, toll free in Oregon at 800-452-4011 or 503-731-3050 Ext 229, coffey.jerry@deq.state.or.us, 503-731-3269, or visit DEQ's website <http://www.deq.state.or.us/news/index.asp>

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

## 340-200-0040

### State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

**NOTE:** Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-

17-00, cert. ef. 6-11-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05

## 340-256-0010

### Definitions

The definitions in OAR 340-200-0020, 340-204-0010, and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

(1) "Basic test" means an inspection and maintenance program designed to measure exhaust emission levels during an unloaded idle or an unloaded raised idle mode as described in OAR 340-256-0340.

(2) "Carbon dioxide" means a compound consisting of the chemical formula (CO<sub>2</sub>).

(3) "Carbon monoxide" means a compound consisting of the chemical formula (CO).

(4) "Certificate of Compliance" means a hard copy or electronic certification issued by a Private Business Fleet, a Public Agency Fleet Vehicle Emission Inspector, a Vehicle Emissions Inspector employed by the Department of Environmental Quality, or an Independent Contractor that the vehicle identified on the certificate is equipped with the required functioning motor vehicle pollution control systems and otherwise complies with the Commission's emission control criteria, standards, and rules.

(5) "Certified Repair Facility" means an automotive repair facility, possessing a current and valid certificate issued by the Department, that employs automotive technicians certified by the Department's Automotive Technician Emission Training Program (ATETP).

(6) "Clean-Screening" means a procedure by which the Department determines that a vehicle has acceptable emissions and then allows the vehicle owner to bypass the traditional centralized emissions inspection station test. The Department's decision may be the result of remotely sensing the emissions, the status of emissions equipment, or another means determined by the Department.

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

(8) "Crankcase emissions" means substances emitted directly to the atmosphere from any opening leading to the crankcase of a motor vehicle engine.

(9) "Dealer" means any person who is engaged wholly or in part in the business of buying, selling, or exchanging, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise, motor vehicles.

(10) "Dealership" means a business involved in the sale of vehicles that is franchised with an automobile manufacturer as defined in ORS 650.120(1).

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

(12) "Diesel motor vehicle" means a motor vehicle powered by a compression-ignition internal combustion engine.

(13) "Director" means the director of the Department.

(14) "DMV" means the Driver and Motor Vehicle Division of the Oregon Department of Transportation.

(15) "Electric vehicle" means a motor vehicle that uses a propulsive unit powered exclusively by electricity.

(16) "Emissions Inspection Station" means an inspection facility, operated by the Department of Environmental Quality or an Independent Contractor, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this Division.

(17) "Enhanced test" means an inspection and maintenance program designed to measure exhaust and fuel evaporative system emissions levels using a loaded transient driving cycle and other measurement techniques as described in OAR 340-256-0350.

(18) "Exhaust emissions" means substances emitted into the atmosphere from any opening downstream from the exhaust ports of a motor vehicle engine.

(19) "Factory-installed motor vehicle pollution control system" means a motor vehicle pollution control system installed by the vehicle or engine manufacturer to comply with United States motor vehicle emission control laws and regulations.

(20) "Gas analytical system" means a device that measures the amount of contaminants in the exhaust emissions of a motor vehicle, and

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that has been issued a license by the Department pursuant to OAR 340-256-0450 and ORS 468A.380.

(21) "Gaseous fuel" means, but is not limited to, liquefied petroleum gases and natural gases in liquefied or gaseous forms.

(22) "Gasoline motor vehicle" means a motor vehicle powered by a spark-ignition internal combustion engine.

(23) "GPM" means Grams Per Mile.

(24) "Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

(25) "Heavy duty motor vehicle" means any motor vehicle rated at more than 8500 pounds GVWR or that has an actual vehicle curb weight as delivered to the ultimate purchaser of 6000 pounds or over.

(26) "Hydrocarbon gases" means a class of chemical compounds consisting of hydrogen and carbon.

(27) "Idle speed" means the unloaded engine speed when accelerator pedal is fully released.

(28) "Independent Contractor" means any person with whom the Department enters into an agreement providing for the construction, equipment, maintenance, personnel, management or operation of emissions inspection stations or activities pursuant to ORS 468A.370.

(29) "Inspection and Maintenance Program (I/M) means a program of conducting regular inspections of motor vehicles, including measurement of air contaminants in the vehicle exhaust and an inspection of emission control systems, to identify vehicles that do not meet the standards of this Division or that have malfunctioning, maladjusted or missing emission control systems, and, when necessary, of requiring the repair or adjustment of vehicles to make the emission control systems function as intended and to reduce tailpipe emissions of air contaminants.

(30) "In-use motor vehicle" means any motor vehicle that is not a new motor vehicle.

(31) "Light-duty motor vehicle" means any motor vehicle rated at 8500 pounds GVWR or less and has an actual vehicle curb weight as delivered to the ultimate purchaser of under 6000 pounds.

(32) "Medford-Ashland Air Quality Maintenance Area (AQMA)" has the meaning given in OAR 340-204-0010.

(33) "Model year" means the annual production period of new motor vehicles or new motor vehicle engines designated by the calendar year in which such period ends. If the manufacturer does not designate a production period, the model year with respect to such vehicles or engines means the 12-month period beginning January of the year in which production thereof begins.

(34) "Motorcycle" means any motor vehicle, including mopeds, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground and having a mass of 680 kilograms (1500 pounds) or less with manufacturer recommended fluids and nominal fuel capacity included.

(35) "Motor vehicle" means any self-propelled vehicle used for transporting persons or commodities on public roads.

(36) "Motor vehicle pollution control system" means equipment designed for installation on a motor vehicle for the purpose of reducing the pollutants emitted from the vehicle, or a system or engine adjustment or modification that causes a reduction of pollutants emitted from the vehicle, or a system or device that inhibits the introduction of fuels that can adversely affect the overall motor vehicle pollution control system.

(37) "Motor Vehicle Fleet Operation" means ownership, control, or management or any combination thereof by any person of five or more motor vehicles.

(38) "New motor vehicle" means a motor vehicle whose equitable or legal title has never been transferred to a person who in good faith purchases the motor vehicle for purposes other than resale.

(39) "Noise level" means the sound pressure level measured by use of metering equipment with an "A" frequency weighting network and reported as dBA.

(40) "OBD" means the On Board Diagnostic system in a vehicle that tracks the effectiveness of the vehicle's emissions control systems. These OBDII (or higher systems) have typically been placed on 1996 and newer motor vehicles.

(41) "OBD Test" means an emissions related test in which the vehicle's On Board Diagnostic computer is downloaded, supplying diagnostic information to evaluate the effectiveness of the vehicle emissions control systems.

(42) "On-Site Vehicle Test" means an emissions related test that is conducted at the vehicle owner's location. Such test will be performed by

DEQ using DEQ's test equipment and is only available as a service for automobile dealerships.

(43) "Owner" means the person having all the incidents of ownership in a vehicle. Where the incidents of ownership are in different persons, it means the person, other than a security interest holder or lessor, entitled to the possession of a vehicle under a security agreement or a lease for a term of ten or more successive days.

(44) "Opacity" means the degree to which transmitted light is obscured, expressed in percent.

(45) "Oxides of Nitrogen" or NOx means oxides of nitrogen except nitrous oxides.

(46) "Person" means any individual, public or private corporation, political subdivision, agency, board, department, or bureau of the state, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever that is recognized by law as the subject of rights and duties.

(47) "Portland Vehicle Inspection Area" has the meaning given in OAR 340-204-0010.

(48) "PPM" means parts per million by volume.

(49) "Private Business Fleet" means ownership by any person of 100 or more Oregon-registered, in-use, motor vehicles, excluding those vehicles held primarily for the purpose of resale.

(50) "Private Business Fleet Vehicle Emissions Inspector" means any person employed on a full-time basis by a Private Business Fleet that possesses a current and valid license issued by the Department pursuant to OAR 340-256-0440 and ORS 468A.380.

(51) "Propulsion exhaust noise" means that noise created in the propulsion system of a motor vehicle that is emitted into the atmosphere from any opening downstream from the exhaust ports. This definition does not include exhaust noise from vehicle auxiliary equipment such as refrigeration units powered by a secondary motor.

(52) "Public Agency Fleet" means ownership of 50 or more government-owned vehicles registered pursuant to ORS 805.040.

(53) "Public Agency Fleet Vehicle Emissions Inspector" means any person employed on a full-time basis by a Public Agency Fleet that possesses a current and valid license issued by the Department pursuant to OAR 340-256-0440 and ORS 468A.380.

(54) "Public roads" means any street, alley, road, highway, freeway, thoroughfare, or section thereof used by the public or dedicated or appropriated to public use.

(55) "Regional Authority" means a regional air quality control authority established under the provisions of ORS 468A.005 to 468A.035, 468A.075, 468A.100 to 468A.130, and 468A.140 to 468A.175.

(56) "Remote Sensing" means a technique for determining the level of a vehicle's emissions without connecting equipment directly to the vehicle. The vehicle's emissions can be determined by either optically measuring the pollutants in the vehicle's exhaust plume, by remotely receiving a vehicle's emissions diagnostic information, or by other means determined by the Department.

(57) "Ringlemann Smoke Chart" means the Ringlemann Smoke Chart with instructions for use as published in May, 1967, by the U.S. Department of Interior, Bureau of Mines.

(58) "RPM" means engine crankshaft revolutions per minute.

(59) "Self-Service Test Lane" means a technique for vehicle testing offered by the Department where the vehicle owner or representative can perform an emissions test on the vehicle at a facility provided by the Department using remote sensing, plug-in OBD emissions testing, or other means designated by the Department.

(60) "Two-stroke cycle engine" means an engine in which combustion occurs, within any given cylinder, once each crankshaft revolution.

(61) "Vehicle Emission Inspector" means any person employed by the Department or an Independent Contractor that possesses a current and valid license issued by the Department pursuant to OAR 340-256-0440 and ORS 468A.380.

(62) "Visible Emissions" means those gases or particulates, excluding uncombined water, that separately or in combination are visible upon release to the outdoor atmosphere.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040. Stat. Auth.: ORS 467.030 & 468A.360

Stats. Implemented: ORS 467.030 & 468A.350 - 468A.400

Hist.: [DEQ 8, f. 4-7-70, ef. 5-11-70; DEQ 4-1993, f. & cert. ef. 3-10-93]; [DEQ 89, f. 4-22-75, ef. 5-25-75; DEQ 139, f. 6-30-77, ef. 7-1-77; DEQ 9-1978, f. & ef. 7-7-78; DEQ 22-1979, f. & ef. 7-5-79; DEQ 18-1980, f. & ef. 6-25-80; DEQ 12-1982, f. & ef. 7-21-82; DEQ 23-1984, f. 11-19-84, ef. 4-1-85; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1996, f. & cert. ef. 11-26-96]; DEQ 14-1999, f. & cert. ef. 10-14-



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99, Renumbered from 340-024-0005 & 340-024-0305; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 11-2001, f. & cert. ef. 10-4-01; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 7-2005, f. & cert. ef. 7-12-05

## 340-256-0100

### Visible Emissions — General Requirements, Exclusions

(1) No person may operate, drive, or cause or permit to be driven or operated any motor vehicle upon a public street or highway that emits into the atmosphere any visible emission.

(2) Excluded from this rule are those motor vehicles:

(a) Powered by compression ignition or diesel cycle engines;

(b) Excluded by written order of the Department by ORS 468A.075.

(3) No person may operate, drive, or cause or permit to be driven or operated any motor vehicle upon a public street or highway if any element of the factory-installed motor vehicle pollution control system has been modified or altered in such a manner that decreases its efficiency or effectiveness in controlling air pollution in violation of ORS 815.305, except as noted in ORS 815.305(2).

Stat. Auth.: ORS 468, 468A & 815

Stats. Implemented: ORS 468A.360

Hist.: DEQ 8, f. 4-7-70, ef. 5-11-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0010; DEQ 7-2005, f. & cert. ef. 7-12-05

## 340-256-0130

### Motor Vehicle Fleet Operation

(1) Motor vehicle fleet operation records pertaining to observations, tests, maintenance, and repairs performed to control or reduce visible emissions from individual motor vehicles must be available for review and inspection by the Department.

(2) The Department, by written notice, may require any motor vehicle of a motor vehicle fleet operation to be tested for compliance with OAR 340-256-0100 and 340-256-0110.

(3) A regional authority, within its territory, may perform the functions of the Department as set forth in sections (1) and (2) of this rule, upon written directive of the Department permitting such action.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.360

Hist.: DEQ 8, f. 4-7-70, ef. 5-11-70; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0025; DEQ 7-2005, f. & cert. ef. 7-12-05

## 340-256-0300

### Scope

Pursuant to ORS 467.030, 468A.350 to 468A.400, 803.350, and 815.295 to 815.325, OAR 340-256-0300 through 340-256-0465 establish the criteria, methods, and standards for inspecting motor vehicles to determine eligibility for obtaining a Certificate of Compliance or inspection. Any person subject to these rules must obtain a Certificate of Compliance as required under ORS 803.350. Any person seeking an exemption from the inspection requirements of this rule must prepare and submit to the Department or DMV a statement describing the grounds for the exemption on forms as provided by the Department or DMV.

(1) Except as provided in sections (3) and (4) of this rule, any person owning or leasing 1975 and newer model year vehicles in the Portland Vehicle Inspection Area must ensure the vehicles meet the requirements of one of the following emission tests:

(a) Basic test. A light duty vehicle of the model years specified in this paragraph must meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400, and 340-256-0430.

(A) Until July 1, 2005, model years 1975 through 1980;

(B) Beginning July 1, 2005 and until July 1, 2006, model years 1975 through 1988;

(C) Beginning July 1, 2006 and until January 1, 2007, model years 1975 through 1992;

(D) Beginning January 1, 2007, model years 1975 through 1995.

(b) Enhanced Test. A light duty vehicle of the model years specified in this paragraph must meet the enhanced test requirements of OAR 340-256-0350 and 340-256-0410. These vehicles found to be safe but unable to be dynamometer tested due to drive line configuration and these vehicles equipped with All Wheel Drive (AWD) will meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400, and 340-256-0430.

(A) Until July 1, 2005, model years 1981 through 1995;

(B) Beginning July 1, 2005 and until July 1, 2006, model years 1989 through 1995;

(C) Beginning July 1, 2006 and until January 1, 2007, model years 1993 through 1995;

(D) Beginning January 1, 2007, no vehicles will be required to meet the enhanced test requirements of OAR 340-256-0350 and 340-256-0410.

(c) A light duty vehicle that is a 1996 and newer model year must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an associated recall), vehicle incompatibility with the OBD test system, or other similar manufacturing problems, the vehicle must meet either the enhanced test requirements of OAR 340-256-0350 and 340-256-0410, the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400, or other test criteria as determined by the Department.

(d) A heavy duty vehicle must meet the basic test requirements of OAR 340-256-0340, 340-256-0390, and 340-256-0420, except gasoline powered heavy duty vehicles equipped with OBDII or higher systems must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an associated recall), vehicle incompatibility with the OBD test system, or other similar manufacturing problems, the vehicle must meet either the enhanced test requirements of OAR 340-256-0350 and 340-256-0410, the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400, or other test criteria as determined by the Department.

(2) Except as provided in section (3) of this rule, any person owning or leasing vehicles that are up to 20 model years in age in the Medford-Ashland Air Quality Maintenance Area must ensure the vehicles meet the requirements of one of the following emission tests:

(a) A light duty vehicle that is a 1996 and newer model year must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an associated recall), vehicle incompatibility with the OBD test equipment, or other similar manufacturing problems, the vehicle must meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400, and 340-256-0430 or other test criteria as determined by the Department.

(b) A light-duty vehicle that is 20 model years in age through 1995 model year must meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0390, 340-256-0400, and 340-256-0420.

(c) A heavy duty vehicle must meet the basic test requirements of OAR 340-256-0340, 340-256-0390, and 340-256-0420. All gasoline powered heavy duty vehicles equipped with OBDII or higher systems must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an associated recall), vehicle incompatibility with the OBD test equipment, or other similar manufacturing problems, the vehicle must meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400, and 340-256-0430 or other test criteria as determined by the Department.

(3) The Department may test any gasoline powered heavy duty or light duty vehicle using one of the following procedures as an alternative to the test procedure otherwise required by this rule:

(a) Clean-Screen Testing following the procedures of OAR 340-256-0357; or

(b) Self-Service Testing following the procedures of OAR 340-256-0358.

(4) Vehicle owners may apply for a waiver from the enhanced test requirements in section (1)(b) of this rule and OAR 340-256-0350. Vehicle owners are eligible in the year 2000 if their net household income is less than or equal to that established by multiplying the year 2000 Federal Poverty Guideline amounts by 1.3. For each year after the year 2000, the calculated year 2000 numbers are adjusted using the Oregon Consumer Price Index for the Portland Metro Regional Area. The Department may require proof of eligibility and vehicle ownership. Providing false information may result in revocation of the low income waiver. If the Department approves the waiver, the owner must pass the basic motor vehicle emissions test requirements in OAR 340-256-0300(1)(a) and 340-256-0340 and pay the required fees in order to receive a certificate of compliance.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

[ED. NOTE: The chart referenced in this rule is available from the agency.]

Stat. Auth.: ORS 467.030 & 468A.350 - 468A.400

Stats. Implemented: ORS 468A.350-400, 803.350 & 815.295

Hist.: DEQ 89, f. 4-22-75, ef. 5-25-75; DEQ 139, f. 6-30-77, ef. 7-1-77; DEQ 23-1984, f. 11-19-84, ef. 4-1-85; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 25-1996, f. & cert. ef. 11-26-96; DEQ 2-1998, f. & cert. ef. 3-5-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0300; DEQ 4-2000(Temp), f. & cert. ef. 2-17-00 thru 8-9-00; DEQ 13-2000, f. &

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cert. ef. 7-28-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 7-2005, f. & cert. ef. 7-12-05

## 340-256-0310

### Government-Owned Vehicle, Permanent Fleet Vehicle and United States Government Vehicle Testing Requirements

(1) All motor vehicles registered as government-owned vehicles under ORS 805.040 that are required to be certified pursuant to ORS 815.300 must, as means of that certification, obtain a Certificate of Compliance. Government-owned vehicles must be certified biennially.

(2) All motor vehicles registered as permanent fleet vehicles under ORS 805.120 that are required to be certified pursuant to ORS 803.350 and 815.295 to 815.325 must, as means of that certification, obtain a Certificate of Compliance.

(3) Any motor vehicle that is to be registered under ORS 805.040 or 805.120 but is not a new motor vehicle must have a Certificate of Compliance issued to it before it is registered, as required by ORS 803.350 and 815.295 to 815.325.

(4) All motor vehicles owned by the United States Government and operated in the Portland Vehicle Inspection Area or the Medford-Ashland Air Quality Maintenance Area (AQMA) must have a Certificate of Compliance issued to it biennially.

(a) United States Government tactical military vehicles are not required to be certified.

(b) Federal installations located within the Portland Area Vehicle Inspection Program and the Medford-Ashland AQMA must provide a listing to the Department of all federal employee-owned vehicles operated on the installation and demonstrate that these vehicles have complied with this Division. Inspection results must be reported to the Department on a quarterly basis, and the list must be updated annually.

(5) For the purposes of providing a staggered certification schedule for vehicles registered as government-owned vehicles under ORS 805.040 or permanent fleet vehicles under ORS 805.120, such schedule must, except as provided by section (6) of this rule, be on the basis of the final numerical digit contained on the vehicle license plate. Such certification must be completed by the last day of the month as provided below (last digit and month or year, respectively):

- (a) 1 — January;
- (b) 2 — February;
- (c) 3 — March;
- (d) 4 — April;
- (e) 5 — May;
- (f) 6 — June;
- (g) 7 — July;
- (h) 8 — August;
- (i) 9 — September;
- (j) 0 — October;

(k) Even — even numbered years for vehicles that are tested biennially;

(l) Odd — odd numbered years for vehicles that are tested biennially.

(6) In order to accommodate a fleet's scheduled maintenance practices, the Department may establish a specific separate schedule for vehicles registered as government-owned vehicles under ORS 805.040 or permanent fleet vehicles under ORS 805.120 if these vehicles are owned by a Public Agency Fleet or Private Business Fleet licensed under OAR 340-256-0440.

(7) Every agency or organization owning vehicles described in this rule must report the following information to the Department, in either electronic or printed form, annually:

- (a) The vehicle make;
- (b) The vehicle model;
- (c) The vehicle identification number (VIN);
- (d) The number of Certificates of Compliance issued; and
- (e) The date on which the motor vehicles were issued Certificates of Compliance.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.  
Stat. Auth.: ORS 468A.360 & 468A.363  
Stats. Implemented: ORS 468A.365 - 468A.385  
Hist.: DEQ 3-1978, f. 3-1-78, ef. 4-1-78; DEQ 19-1983, f. 11-29-83, ef. 12-31-83; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 25-1996, f. & cert. ef. 11-26-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0306; DEQ 7-2005, f. & cert. ef. 7-12-05

## 340-256-0340

### Light Duty Motor Vehicle and Heavy Duty Gasoline Motor Vehicle Emission Control Test Method for Basic Program

(1) General Requirements:

(a) Vehicles having coolant, oil or fuel leaks or any other such defect that is unsafe to allow the emission test to be conducted must be rejected from the testing area. The Inspector may not conduct the emissions test until the defects are corrected.

(b) The vehicle transmission must be placed in neutral gear if equipped with a manual transmission or in park position if equipped with an automatic transmission. The hand or parking brake must be engaged. If the brake is defective, then wheel chocks must be placed in front of or behind the vehicle's tires, or both when appropriate.

(c) All accessories are to be turned off.

(d) The Inspector must insure that the motor vehicle is equipped with the required functioning motor vehicle pollution control system in accordance with the criteria of OAR 340-256-0380 or 340-256-0390. For vehicles not meeting this criteria upon completion of the testing process, the Inspector must issue a report to the driver stating all reasons for noncompliance.

(e) Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations will begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations will be analyzed at a rate of two times per second. The measured value for pass/fail determinations will be a simple running average of the measurements taken over five seconds.

(f) Pass/fail determinations. A pass or fail determination will be made for each applicable test mode based on a comparison of the applicable standards listed in OAR 340-256-0400 and 340-256-0420 and the measured value for HC and CO and described in subsection (1)(a) of this rule. A vehicle will pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable standards. A vehicle will fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(g) Void test conditions. If the measured concentration of CO plus CO<sub>2</sub> falls below the applicable standards listed in OAR 340-256-0380 and 340-256-0390, or if the vehicle's engine stalls at any time during the test sequence, the test will end, and any exhaust gas measurements will be voided.

(h) Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes will be sampled simultaneously.

(i) The test will be terminated upon reaching the overall maximum test time.

(2) Test sequence.

(a) The test sequence will consist of a first-chance test and a second chance test as follows:

(A) The first-chance test, as described in section (3) of this rule, will consist of an idle mode followed by a high-speed mode.

(B) The second-chance high-speed mode, as described in section (3) of this rule, will immediately follow the first-chance high-speed mode. It will be performed only if the vehicle fails the first-chance test. The second-chance idle mode, as described in section (4) of this rule, will follow the second chance high speed mode and be performed only if the vehicle fails the idle mode of the first-chance test.

(b) The test sequence will begin only after the following requirements are met:

(A) The vehicle will be tested in as-received condition with the transmission in neutral or park and all accessories turned off. The engine will be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(B) The tachometer will be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(C) The sample probe will be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension will be used.

(D) The measured concentration of CO plus CO<sub>2</sub> will be greater than or equal to the applicable standards listed in OAR 340-256-0380 and 340-256-0390.

(3) First-chance test and second-chance high-speed mode. The test timer will start (t=0) when the conditions specified in section (2)(b) of this rule are met. The first-chance test and second-chance high-speed mode will have an overall maximum test time of 390 seconds (t=390). The first-chance test will consist of an idle mode followed immediately by a high-

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speed mode. An additional second-chance high-speed mode will follow immediately, if necessary.

(a) First-chance idle mode.

(A) Except for diesel vehicles, the mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If engine speed exceeds 1300 rpm or falls below 550 rpm, the mode timer will reset to zero and resume timing. The minimum idle mode length will be determined as described in section (3)(a)(B) of this rule. The maximum idle mode length will be 30 seconds (mt=30) elapsed time.

(B) The pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle, and the mode will be terminated as follows:

(i) If, before an elapsed time of 30 seconds (mt=30), measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420, the vehicle will pass the idle mode, and the mode will be terminated.

(ii) The vehicle will fail the idle mode and the mode will be terminated if the provisions of section (3)(a)(B)(i) of this rule are not satisfied within an elapsed time of 30 seconds (mt=30).

(iii) The vehicle may fail the first-chance and second-chance test will be omitted if no exhaust gas concentration less than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(b) First-chance and second-chance high-speed modes. This mode includes both the first-chance and second-chance high-speed modes and follows immediately upon termination of the first-chance idle mode.

(A) Except for diesel vehicles, the mode timer will reset (mt=0) when the vehicle engine speed is between 2200 and 2800 rpm. If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than two seconds in one excursion or more than six seconds over all excursions within 30 seconds of the final measured value used in the pass/fail determination, the measured value will be invalidated and the mode continued. If any excursion lasts for more than ten seconds, the mode timer will reset to zero (mt=0) and timing resumed. The minimum high-speed mode length will be determined as described under paragraphs (3)(b)(B) and (C) of this rule. The maximum high-speed mode length will be 180 seconds (mt=180) elapsed time.

(B) Ford Motor Company and Honda vehicles. For 1981-1987 model year Ford Motor Company vehicles and 1984-1985 model year Honda Preludes, the pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(i) A pass or fail determination, as described below, will be used, for vehicles that passed the idle mode, to determine whether the high-speed test should be terminated before or at the end of an elapsed time of 180 seconds (mt=180).

(I) If, before an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(II) Restart. If at an elapsed time of 30 seconds (mt=30) the measured values are greater than the applicable standards listed in OAR 340-256-0400 and 340-256-0420, the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds have elapsed (mt=40).

(III) If, at any point between an elapsed time of 40 seconds (mt=40) and 60 seconds (mt=60), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(IV) If, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180), both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 or 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(V) If neither of sections (3)(b)(B)(i)(I), (III) or (IV) of this rule is satisfied by an elapsed time of 180 seconds (mt=180), the vehicle will fail the high-speed mode, and the test will be terminated. (ii) A pass or fail determination will be made for vehicles that fail the idle mode and the high-speed mode terminated at the end of an elapsed time of 180 seconds (mt=180) as follows:

(V-a) The vehicle will pass the high-speed mode, and the mode will be terminated at an elapsed time of 30 seconds (mt=30), if any measured

values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420.

(V-b) Restart. If at an elapsed time of 30 seconds (mt=30) the measured values of HC and CO exhaust gas concentrations during the high-speed mode are greater than the applicable short test standards as described in subsection (1)(b) of this rule, the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds (mt=40) have elapsed.

(V-c) The vehicle will pass the high-speed mode, and the mode will be terminated at an elapsed time of 60 seconds (mt=60), if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420.

(V-d) If, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180), both HC and CO emissions continue to decrease, and measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 or 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(V-e) If neither of sections (3)(b)(B)(ii)(I), (III) or (IV) of this rule is satisfied by an elapsed time of 180 seconds (mt=180), the vehicle will fail the high-speed mode, and the test will be terminated.

(C) All other light-duty vehicles. The pass/fail analysis for vehicles not specified in section (3)(b)(B) of this rule will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(i) A pass or fail determination will be used for 1981 and newer model year vehicles that passed the idle mode to determine whether the high-speed mode should be terminated before or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, no high speed idle mode test will be performed.

(I) If, before an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(II) If emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(III) The vehicle will fail the high-speed mode, and the test will be terminated, if neither of the provisions of section (3)(b)(C)(i)(I) or (II) of this rule is satisfied.

(ii) A pass or fail determination will be made for 1981 and newer model year vehicles that failed the idle mode and the high-speed mode terminated before or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, the duration of the high speed idle mode will be 30 seconds, and no pass or fail determination will be used at the high speed idle mode.

(I) The vehicle will pass the high-speed mode, and the mode will be terminated at an elapsed time of 30 seconds (mt=30), if any measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420.

(II) If emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(III) If neither of the provisions of section (3)(b)(C)(ii)(I) or (II) of this rule is satisfied, the vehicle will fail the high speed mode, and the test will be terminated.

(4) Second-chance idle mode. If the vehicle fails the first-chance idle mode and passes the high-speed mode, the mode timer will reset to zero (mt=0), and a second chance idle mode will commence. The second-chance idle mode will have an overall maximum mode time of 30 seconds (mt=30). The test will consist on an idle mode only.

(a) The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes will be shut off for not more than 10 seconds and restarted. The probe may be removed from the tailpipe or the sample



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pump turned off if necessary to reduce analyzer fouling during the restart procedure.

(b) Except for diesel vehicles, the mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If the engine speed exceeds 1300 rpm or falls below 550 rpm the mode timer will reset to zero and resume timing. The minimum second-chance idle mode length will be determined as described in section (4)(c) of this rule. The maximum second-chance idle mode length will be 30 seconds (mt=30) elapsed time.

(c) The pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle and the second-chance mode will be terminated as follows:

(A) If, before an elapsed time of 30 seconds (mt=30), any measured values are less than or equal to 100 ppm HC and 0.5 percent CO, the vehicle will pass the second-chance idle mode, and the test will be terminated.

(B) The vehicle will pass the second-chance idle mode, and the test will be terminated at the end of an elapsed time of 30 seconds (mt=30) if, before that time, the criteria of paragraph (4)(c)(A) of this rule are not satisfied, and the measured values during the time period between 25 and 30 seconds (mt=25-30) are less than or equal to the applicable short test standards listed in OAR 340-256-0400 and 340-256-0420.

(C) If neither of the provisions of sections (4)(c)(A) or (B) of this rule is satisfied by an elapsed time of 30 seconds (mt=30), the vehicle will fail the second-chance idle mode, and the test will be terminated.

(5) If the vehicle is capable of being operated with both gasoline and gaseous fuels, then the steps in section (2) of this rule are to be followed so that emission test results are obtained from both fuels.

(6) If the inspector suspects that the vehicle is emitting propulsion exhaust noise in excess of the noise standards of OAR 340-256-0430, adopted pursuant to ORS 467.030, then a noise measurement will be conducted and recorded while the engine is at the speed specified in section (3)(b)(A) of this rule. A reading from each exhaust outlet must be recorded at the raised engine speed. This provision for noise inspection applies only within the Portland Vehicle Inspection Area.

(7) If the vehicle complies with OAR 340-256-0380 through 340-256-0430, ORS 467.030, 468A.350 through 468A.400, 803.350, and 815.295 through 815.325, then, following receipt of the required fees, the Private Business Fleet Vehicle Emission Inspector, Public Agency Fleet Vehicle Emission Inspector, or Vehicle Emission Inspector must issue the required Certificate of Compliance.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.  
Stat. Auth.: ORS 468A.360  
Stats. Implemented: ORS 468A.350 - 468A.385  
Hist.: DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1996, f. & cert. ef. 11-26-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0309; DEQ 7-2005, f. & cert. ef. 7-12-05

## 340-256-0350

### Light Duty Motor Vehicle Emission Control Test Method for Enhanced Program

(1) General Requirements.

(a) Data Collection. The following information must be determined for the vehicle being tested and used to automatically select the dynamometer inertia and power absorption settings:

(A) Vehicle type: LDPC, LDT1 or LDT2;

(B) Chassis model year;

(C) Make;

(D) Model;

(E) Gross vehicle weight rating; and

(F) Number of cylinders, or cubic inch displacement of the engine.

(b) Ambient Conditions. The ambient temperature, absolute humidity, and barometric pressure must be recorded continuously during the transient driving cycle or as a single set of readings up to 4 minutes before the start of the transient driving cycle.

(c) Restart. If shut off, the vehicle must be restarted as soon as possible before the test and must be running at least 30 seconds before the transient driving cycle.

(2) Pre-inspection and Preparation.

(a) Accessories. The Inspector must ensure that all accessories (air conditioning, heat, defogger, radio, automatic traction control if switchable, etc.) will be turned off.

(b) Leaks. The vehicle must be inspected for exhaust leaks. Vehicles with leaking exhaust systems will be rejected from testing. Vehicles having coolant, oil or fuel leaks or any other such defect that is unsafe to allow the emission test to be conducted will be rejected from the testing area. The

Inspector is prohibited from conducting the emission test until the defects are corrected.

(c) Operating Temperature. Vehicles in overheated condition will be rejected from testing.

(d) Tire Condition. Vehicles will be rejected from testing if the tire cords, bubbles, cuts, or other damage are visible. Vehicles will be rejected that have space-saver spare tires on the drive axle. Vehicles may be rejected that do not have reasonably sized tires. Vehicle tires will be visually checked for adequate pressure level. Drive wheel tires that appear low will be inflated to approximately 30 psi or to tire sidewall pressure or manufacturers recommendations.

(e) Ambient Background. Background concentrations of hydrocarbons, carbon monoxide, oxides of nitrogen, and carbon dioxide (HC, CO, NOx, and CO<sub>2</sub>, respectively) will be sampled to determine background concentration of constant volume sampler dilution air. The sample will be taken for a minimum of 15 seconds within 120 seconds of the start of the transient driving cycle, using the same analyzers used to measure tailpipe emissions. Average readings over the 15 seconds for each gas will be recorded in the test record. Testing will be prevented until the average ambient background levels are less than 20 ppm HC, 35 ppm CO, and 2 ppm NOx.

(f) Sample System Purge. While a lane is in operation, the CVS will continuously purge the CVS hose between tests, and the sample system will be continuously purged when not taking measurements.

(g) Negative Values. Negative gram per second readings will be integrated as zero and recorded as such.

(3) Equipment Positioning and Setting.

(a) Roll Rotation. The vehicle will be maneuvered onto the dynamometer with the drive wheels positioned on the dynamometer rolls. Before the test begins, the rolls will be rotated until the vehicle laterally stabilizes on the dynamometer. Drive wheel tires will be dried if necessary to prevent slippage during the initial acceleration.

(b) Purge Equipment. After the vehicle is positioned on the dynamometer, the vehicle gas cap is removed. A replacement cap with a ported hole through the cap is installed on the vehicle and the tubing to duct Helium to vehicle is connected to the port on the replacement cap. Helium flow into the cap is computer controlled to match the timing of the transient driving cycle. The evaporative canister purge will be measured during the transient driving cycle by inputting Helium under pressure into the test vehicle's fuel tank. Helium is measured in the vehicle exhaust with a detection device and accumulated volume of Helium is compared with the standard of 0.45 liters of Helium to determine pass/fail.

(c) Cooling System. Testing will not begin until the test-cell cooling system is positioned and activated. The cooling system will be positioned to direct air to the vehicle cooling system, but will not be directed at the catalytic converter.

(d) Vehicle Restraint. Testing will not begin until the vehicle is restrained and, for front-wheel drive vehicles, the parking brake is set.

(e) Dynamometer Settings. Dynamometer power absorption and inertia weight settings will be automatically chosen from an EPA supplied electronic look-up table that will be referenced based upon the vehicle identification information obtained in section (1)(a) of this rule. Vehicles not listed will be tested using default power absorption and inertia settings as follows: [Table not included. See ED. NOTE.]

(f) Exhaust Collection System. The exhaust collection system will be positioned to ensure that the entire exhaust stream from the tailpipe is captured during the transient driving cycle.

(4) Vehicle Emission Test Sequence.

(a) Transient Driving Cycle. The Oregon enhanced test cycle consists of a single 31 second symmetrical peak with a maximum speed of 30.1 miles per hour (MPH). If the vehicle exceeds the emission standards established in OAR 340-256-0410, additional cycles up to a maximum of four (4) will be driven. If the vehicle passes the standards during any of the four cycles, the test will be terminated. After receiving the required fees, the Inspector will issue the required Certificate of Compliance. If after four cycles the vehicle still has not passed the test, the vehicle fails. The vehicle will be driven over the following cycle: [Table not included. See ED. NOTE.]

(b) Driving Trace. The Inspector will follow an electronic, visual depiction of the time/speed relationship of the transient driving cycle (hereinafter, the trace). The visual depiction of the trace will be of sufficient magnification and adequate detail to allow accurate tracking by the Inspector and will permit the Inspector to anticipate upcoming speed

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changes. The trace will also clearly indicate gear shifts as specified in section (4)(c) of this rule.

(c) Shift Schedule. For vehicles with manual transmissions, Inspectors will shift gears according to the following shift schedule: [Table not included. See ED. NOTE.] Gear shifts will occur at the points in the driving cycle where the specified speeds are obtained.

(d) Speed Excursion Limits. Speed excursion limits will apply as follows:

(A) The upper limit is 2 mph higher than the highest point on the trace within 1 second of the given time.

(B) The lower limit is 2 mph lower than the lowest point on the trace within 1 second of the given time.

(C) Speed variations greater than the tolerances (such as may occur during gear changes) are acceptable provided they occur for no more than 2 seconds on any occasion.

(D) Speeds lower than those prescribed during accelerations are acceptable provided the vehicle is operated at maximum available power during such accelerations until the vehicle speed is within the excursion limits.

(E) Exceedances of the limits in (A) through (C) of this section will automatically result in a void test. The station manager can override the automatically void test if the manager determines that the conditions specified in section (4)(d)(D) of this rule occurred. Tests will be aborted if the upper excursion limits are exceeded. Tests may be aborted if the lower limits are exceeded.

(e) Speed Variation Limits.

(A) A linear regression of feedback value on reference value will be performed on each transient driving cycle for each speed using the method of least squares, with the best fit equation having the form:  $y = mx + b$ , where:

(i)  $y$  = The feedback (actual) value of speed;

(ii)  $m$  = The slope of the regression line;

(iii)  $x$  = The reference value; and

(iv)  $b$  = The  $y$ -intercept of the regression line.

(B) The standard error of estimate (SE) of  $y$  on  $x$  will be calculated for each regression line. A transient driving cycle lasting the full 31 seconds that exceeds the following criteria will be void and the test will be repeated:

(i) SE = 2.0 mph maximum.

(ii)  $m = 0.96-1.01$ .

(iii)  $r^2 = 0.97$  minimum.

(iv)  $b = \pm 2.0$  mph.

(f) Distance Criteria. The actual distance traveled for the transient driving cycle and the equivalent vehicle speed (i.e., roll speed) will be measured. If the absolute difference between the measured distance and the theoretical distance for the actual test exceeds 0.05 miles, the test will be void.

(g) Vehicle Stalls. Vehicle stalls during the test will result in a void and a new test. Three (3) stalls will result in test failure or rejection from testing.

(h) Dynamometer Controller Check. For each test, the measured horsepower, and inertia if electric simulation is used, will be integrated from 55 seconds to 81 seconds (divided by 26 seconds), and compared with the theoretical road-load horsepower (for the vehicle selected) integrated over the same portion of the cycle. The same procedure will be used to integrate the horsepower between 189 seconds to 201 seconds (divided by 12 seconds). The theoretical horsepower will be calculated based on the observed speed during the integration interval. If the absolute difference between the theoretical horsepower and the measured horsepower exceeds 0.5 hp, the test will be void. Alternate error checking methods may be used if shown to be equivalent.

(i) Inertia Weight Selection. Operation of the inertia weight selected for the vehicle will be verified as specified in OAR 340-256-0460. For systems employing electrical inertia simulation, an algorithm identifying the actual inertia force applied during the transient driving cycle will be used to determine proper inertia simulation. For all dynamometers, if the observed inertia is more than 1% different from the required inertia, the test will be void.

(j) Constant Volume Sampling (CVS) Operation. The CVS operation will be verified for each test for a Critical Flow Venturi (CFV) type CVS by measuring either the absolute pressure difference across the venturi or measuring the blower vacuum behind the venturi for minimum levels needed to maintain choke flow for the venturi design. The operation of an Subsonic Venturi (SSV) type CVS will be verified throughout the test by

monitoring the difference in pressure between upstream and throat pressure. The minimum values will be determined from system calibrations. Monitored pressure differences below the minimum values will void the test.

(k) Fuel Economy. For each test, the health of the overall analysis system will be evaluated by checking a test vehicle's fuel economy for reasonableness, relative to upper and lower limits, representing the range of fuel economy values normally encountered for the test inertia and horsepower selected. For each inertia selection, the upper fuel economy limit will be determined using the lowest horsepower setting typically selected for the inertia weight, along with statistical data, test experience, and engineering judgment. A similar process for the lower fuel economy limit will be used with the highest horsepower setting typically selected for the inertia weight. For test inertia selections where the range of horsepower settings is greater than 5 horsepower, at least two sets of upper and lower fuel economy limits will be determined and appropriately used for the selected test inertia. Tests with fuel economy results in excess of 1.5 times the upper limit will result in a void test.

(5) Emission Measurements. The emission analysis system will sample and record dilute exhaust HC, CO, CO<sub>2</sub>, and NO<sub>x</sub> during the transient driving cycle.

(6) If it is determined that the vehicle complies with OAR 340-256-0400 and ORS 815.310 through 815.325, then, after receiving the required fees, the Private Business Fleet Vehicle Emission Inspector, Public Agency Fleet Vehicle Emission Inspector, or Vehicle Emission Inspector must issue the required Certificate of Compliance.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468A.360 & 468A.363

Stats. Implemented: ORS 468A.350 - 468A.385

Hist.: DEQ 25-1996, f. & cert. ef. 11-26-96; DEQ 14-1999, f. & cert. ef. 10-14-99,

Renumbered from 340-024-0312; DEQ 7-2005, f. & cert. ef. 7-12-05

## 340-256-0380

### Light Duty Motor Vehicle Emission Control Test Criteria for Basic Program

(1) No vehicle emission control test is valid if the vehicle exhaust system leaks in such a manner as to dilute the exhaust gas being sampled by the gas analytical system. For the purpose of the emission control tests conducted at state facilities, except for diesel vehicles, tests are invalid if the exhaust gas is diluted to such an extent that the sum of the carbon monoxide and carbon dioxide concentrations recorded for the idle speed reading from an exhaust outlet is six percent or less, and on 1975 and newer vehicles with air injection systems seven percent or less.

(2) No vehicle emission control test is valid if the engine idle speed exceeds the manufacturer's idle speed specifications by over 200 RPM.

(3)(a) No vehicle emission control test for a 1975 or newer model vehicle is valid if the gas cap or catalyst has been disconnected, plugged, or otherwise made inoperative in violation of ORS 815.305(1), except as noted in ORS 815.305(2) or as provided for by 40 CFR 85.1701-1709 (published July 1, 2003).

(b) The Department may provide alternative criteria for those required under subsection (a) of this section if it determines that the component or an acceptable alternative is unavailable. Such alternative criteria may be granted on the basis of the nonavailability of the original part, replacement part, or comparable alternative solution.

(c) The use of a nonoriginal equipment aftermarket part (including a rebuilt part) as a replacement part is not a violation of ORS 815.305 if a reasonable basis exists for knowing that such use will not adversely affect emission control efficiency. The Department will maintain a list of those parts that have been determined to adversely affect emission control efficiency;

(d) The use of a nonoriginal equipment aftermarket part or system as an add-on, auxiliary, augmenting, or secondary part of system, is not a violation of ORS 815.305 if such part or system is on the list of "Modifications to Motor Vehicle Emission Control Systems Exempted Under California Vehicle Code Section 27156" granted by the California Air Resources Board, is on the U.S. Environmental Protection Agency's list of "Certified to EPA Standards," or the Department has determined after reviewing testing data that there is no decrease in the efficiency or effectiveness in the control of air pollution;

(e) Adjustments or alterations of particular part or system parameter, if done for purposes of maintenance or repair according to the vehicle or engine manufacturer's instructions, are not violations of ORS 815.305.

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(4) A 1981 or newer model vehicle that has been converted to operate on gaseous fuels is not in violation of ORS 815.305 when elements of the factory-installed motor vehicle air pollution control system are disconnected for the purpose of conversion to gaseous fuel as authorized by ORS 815.305.

(5) For a 1975 through 1980 model year vehicle in which the original engine has been replaced, if either the vehicle body or chassis original engine (per registration or title) or replacement engine (as manufactured) had a catalytic converter system, it must be present, intact, and operational before a Certificate of Compliance may be issued.

(6) For a 1981 or newer model year vehicle in which the original engine has been replaced, the emission test standards and applicable emissions control equipment for the year, make, and model of the vehicle body or chassis (per registration or title) or replacement engine, whichever is newer, apply. For those diesel powered vehicles that have been converted to operate on gasoline or gasoline equivalent fuel(s), the emission test standards and applicable emission control equipment for the year, make, and model of the gasoline equivalent powered engine as originally manufactured, for the vehicle body or chassis (per the registration) or replacement engine, whichever is newer, apply.

(7) For those vehicles registered or titled as a 1981 or newer model year that were assembled by other than a licensed motor vehicle manufacturer, such as an Assembled, Reconstructed, or Replica Vehicle, Department personnel must determine the applicable emission test standards based upon the vintage of the vehicle engine. The year of the engine is presumed to be that stated by the vehicle owner, unless Department personnel determine, after physical inspection, that the year of the engine is other than that stated by the owner.

(8) An imported nonconforming motor vehicle that has been imported under a certificate of conformity or modification/test procedure pursuant to 40 CFR Part 85, Subpart P, must comply with the emission control equipment requirements of such certificate or procedure.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468A.360

Stats. Implemented: ORS 468A.350 - 468A.385

Hist.: DEQ 89, f. 4-22-75, ef. 5-25-75; DEQ 116(Temp), f. & ef. 7-27-76; DEQ 121, f. & ef. 9-3-76; DEQ 139, f. 6-30-77, ef. 7-1-77; DEQ 9-1978, f. & ef. 7-7-78; DEQ 22-1979, f. & ef. 7-5-79; DEQ 6-1980, f. & ef. 1-29-80; DEQ 18-1980, f. & ef. 6-25-80; DEQ 12-1982, f. & ef. 7-21-82; DEQ 19-1983, f. 11-29-83, ef. 12-31-83; DEQ 6-1985, f. & ef. 5-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 21-1988, f. & cert. ef. 9-12-88; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1996, f. & cert. ef. 11-26-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0320; DEQ 7-2005, f. & cert. ef. 7-12-05

## 340-256-0390

### Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria

(1) No vehicle emission control test is valid if the vehicle exhaust system leaks in such a manner as to dilute the exhaust gas being sampled by the gas analytical system. For the purpose of emission control tests conducted at state facilities, tests will not be considered valid if the exhaust gas is diluted to such an extent that the sum of the carbon monoxide and carbon dioxide concentrations recorded for the idle speed reading from an exhaust outlet is six percent or less.

(2) No vehicle emission control test is valid if the engine idle speed exceeds 1300 RPM.

(3)(a) No vehicle emission control test for a 1981 or newer model vehicle is valid if the gas cap or catalyst has been disconnected, plugged, or otherwise made inoperative in violation of ORS 815.305(1), except as noted in ORS 815.305(2).

(b) The Department may provide alternative criteria for those required under subsection (a) of this section if it determines that the component or an acceptable alternative is unavailable. Such alternative criteria may be granted on the basis of the nonavailability of the original part, replacement part, or comparable need for an alternative solution.

(c) The use of a nonoriginal equipment aftermarket part (including a rebuilt part) as a replacement part is not a violation of ORS 815.305, if a reasonable basis exists for knowing that such use will not adversely affect emission control efficiency. The Department will maintain a list of those parts that have been determined to adversely affect emission control efficiency;

(d) The use of a nonoriginal equipment aftermarket part or system as an add-on, auxiliary, augmenting, or secondary part or system is not a violation of ORS 815.305, if such part or system is listed on the Department's exemption list;

(e) Adjustments or alterations of a particular part or system parameter, if done for purposes of maintenance or repair according to the vehicle or engine manufacturer's instructions, are not violations of ORS 815.305.

(4) A 1981 or newer model motor vehicle that has been converted to operate on gaseous fuels is in violation of ORS 815.305 if elements of the factory-installed motor vehicle air pollution control system are disconnected for the purpose of conversion to gaseous fuel as authorized by ORS 815.305.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468A.360

Stats. Implemented: ORS 468A.350 - 468A.385

Hist.: DEQ 136, f. 6-10-77, ef. 7-1-77; DEQ 22-1979, f. & ef. 7-5-79; DEQ 12-1982, f. & ef. 7-21-82; DEQ 19-1983, f. 11-29-83, ef. 12-31-83; DEQ 6-1985, f. & ef. 5-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 21-1988, f. & cert. ef. 9-12-88; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1996, f. & cert. ef. 11-26-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0325; DEQ 7-2005, f. & cert. ef. 7-12-05

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**Rules Amended:** 340-090-0040, 340-090-0045, 340-090-0050, 340-090-0060, 340-100-0002, 340-102-0065, 340-141-0005, 340-141-0010, 340-141-0140, 340-142-0005, 340-142-0130, 340-162-0150, 340-177-0095

**Subject:** 1) revises language in OAR 340-102-0065 pertaining to fees paid by generators of hazardous waste, reflecting changes adopted by the 2003 legislature;

2) adopts a corrected reference in OAR 340-100-0002 to existing federal regulations pertaining to hazardous waste management;

3) incorporates fee changes enacted by the 2001 legislature for a) underground storage tank cleanup service provider registration and licenses in OAR 340-162-0150; and b) certification of home heating oil tank cleanup and decommissioning reports in OAR 340-177-0095;

4) replaces an out-of-date name for the federal emergency response system in OAR 340-141 and 340-142, reflecting changes made by the federal Department of Homeland Security. In addition, the amendments incorporate fee changes enacted by the 2003 legislature pertaining to dredge and passenger vessels into OAR 340-141-0010; and

5) amends OAR 340-090-0040 to 0060 pertaining to solid waste recovery goals reflecting changes made by the 2001 legislature.

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

## 340-090-0040

### Local Government Recycling Program Elements

In addition to the minimum requirements in OAR 340-090-0030 each city with a population of 4,000 or more and any county responsible for the area between the city limits and the urban growth boundary shall implement additional recycling program requirements selected from section (3) of this rule in accordance with the following requirements:

(1) Each city with a population of at least 4,000 but not more than 10,000 that is not within a Metropolitan Service District and any county responsible for the area between the city limits and the urban growth boundary of such city shall implement one of the following, except where otherwise indicated:

(a) Implement subsections (3)(a), (b), and (c) of this rule; or

(b) Select and implement at least three program elements listed in section (3) of this rule; or

(c) Implement an alternative method that is approved by the Department in accordance with the requirements of OAR 340-090-0080.

(2) Each city with a population of more than 10,000 or that is within a Metropolitan Service District and any county responsible for the area within a Metropolitan Service District or the area between the city limits and the urban growth boundary of such city shall implement one of the following, except where otherwise indicated:

(a) Implement subsections (3)(a), (b), and (c) of this rule and one additional element in section (3) of this rule; or

(b) Select and implement at least five program elements listed in section (3) of this rule; or



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(c) Implement an alternative method that is approved by the Department in accordance with the requirements of OAR 340-090-0080.

(3) Program elements:

(a) Deliver to each residential collection service customer at least one durable recycling container. For purposes of this program element a durable container shall be a rigid box or bucket with a volume of at least 12 gallons made of material that holds up under all weather conditions for at least five years, and is easily handled by the resident and the collector;

(b) Provide on-route collection at least once each week of source separated recyclable materials, excluding yard debris, to residential collection service customers provided on the same day that solid waste is collected from each customer;

(c) Provide a recycling education and promotion program that is expanded from the minimum requirements described in OAR 340-090-0030(3), and supports the management of solid waste in the following priority order: first preventing the generation of waste, then reusing materials, then recycling materials, then composting materials, then recovering energy, and finally safely disposing of solid waste that cannot be prevented, reused, recycled, composted or used for energy recovery.

(A) The expanded program:

(i) Shall inform all solid waste generators of how to prevent waste, reuse, recycle and compost material;

(ii) Shall inform all solid waste generators of the benefits of preventing waste, reusing, recycling and composting materials;

(iii) Shall promote the use of available recycling services; and

(iv) Shall target educational and promotional materials provided to commercial customers to meet the needs of various types of businesses and should include reasons to recycle, including economic benefits, common barriers to recycling and solutions, additional resources for commercial generators of solid waste, and other information designed to assist and encourage recycling efforts. These materials shall encourage each commercial collection customer to have a goal to achieve 50 percent recovery from its solid waste stream by the year 2009.

(B) The expanded program shall be provided in one of the two following ways:

(i) A "Specified Action" program, which shall include at a minimum the following elements:

(I) All new residential and commercial collection service customers shall each receive a packet of educational materials that contain information listing the materials collected, the schedule for collection, proper method of preparing materials for collection and an explanation of the reasons why source separation of materials for recycling should be done;

(II) Existing residential and commercial collection service customers shall be provided information identified in OAR 340-090-0040(3)(c)(B)(i)(I) at least four times a calendar year through a written notice or effective alternative to reach various solid waste generators, or combination of both;

(III) At least annually information regarding the benefits of recycling and the type and amount of materials recycled during the past year shall be provided directly to the collection service customer in written form and shall include additional information including the procedure for preparing materials for collection;

(IV) Targeting of at least one community or media event per year to promote waste prevention, reuse, recycling and composting, although not every media event needs to promote all of those activities;

(V) Utilizing a variety of materials and media formats to disseminate the information in the expanded program in order to reach the maximum number of collection service customers and residential and commercial generators of solid waste; or

(ii) Development and implementation of an "Expanded Education and Promotion Plan." The Plan shall:

(I) Include actions to effectively reach solid waste generators and all new and existing collection service customers;

(II) Include such actions as necessary to fulfill the intent of this subsection;

(III) Include a timetable for implementation, which shall be implemented; and

(IV) Be submitted to the Department:

(i) By February 28 of the first year that the Plan is to be in effect; or

(ii) Within 30 days of the beginning of the local government's fiscal year in which the Plan is first put into effect.

(d) Establish and implement a recycling collection program through local ordinance, contract or any other means enforceable by the appropriate

city or county for each multi-family dwelling complex having five or more units. The collection program shall meet the following requirements:

(A) Collect at least four principal recyclable materials or the number of materials required to be collected under the residential on-route collection program, whichever is less;

(B) Provide educational and promotional information directed toward the residents of multi-family dwelling units periodically as necessary to be effective in reaching new residents and reminding existing residents of the opportunity to recycle including the types of materials to be recycled and the method for properly preparing those materials.

(e) Establish and implement an effective residential yard debris program for the collection and composting of residential yard debris. The program shall include the following elements:

(A) Promotion of home composting of yard debris through written material or some other effective media form that is directed at the residential generator of yard debris; and either

(B) At least monthly on-route collection of yard debris from residences for production of compost or other marketable products; or

(C) System of residential yard debris collection depots, for the production of compost or other marketable products, located such that there is at least one conveniently located depot for every 25,000 population and open to the public at least once a week.

(f) Taking into account material generation rates, establish and implement regular, on-site collection of source separated principal recyclable materials from commercial entities, taking into consideration how the generator could achieve 50 percent recovery. This program element does not apply to manufacturing, business or processing activities in residential dwellings or to the generation of industrial solid waste. At a minimum the commercial recycling program:

(A) Shall be provided to commercial entities that employ 10 or more persons and occupy 1,000 square feet or more in a single location;

(B) Shall include an education and promotion program which:

(i) Uses materials and messages specifically designed for commercial generators of solid waste; and

(ii) Informs all commercial generators of solid waste of the benefits of recycling, the recycling opportunities available to them and how to recycle; and

(iii) If the local government is providing the expanded education and promotion program element, includes any additional requirements needed to meet OAR 340-090-0040(3)(c);

(iv) Includes information on the benefits of waste prevention to commercial generators.

(C) Shall be conducted to effectively promote the commercial recycling program to commercial generators of solid waste;

(D) Shall encourage commercial generators to strive to achieve 50 percent recovery from their solid waste stream by the year 2009;

(E) Should provide other elements including but not limited to:

(i) Provision of waste assessments to businesses;

(ii) Provision of recycling receptacles to businesses at no or low cost;

(iii) Waste prevention and recycling recognition programs. Local governments are encouraged to involve local business organizations in publicly recognizing outstanding waste prevention and recycling efforts by commercial generators of solid waste. The recognition may include awards designed to provide additional incentives to increase waste prevention and recycling efforts.

(g) Establish depots for recycling collection of all principal recyclable materials listed in OAR 340-090-0070, and where feasible, additional materials. This program shall provide at least one (1) recycling depot in addition to the depot(s), if any, required by OAR 340-090-0030(1) and shall result in at least one (1) conveniently located depot for every 25,000 population. The expanded program shall include promotion and education that maximizes the use of the expanded depot program. The depots shall operate as follows:

(A) Have regular and convenient hours for residential generators of solid waste; and

(B) Open on the weekend days; and

(C) Be established in location(s) such that it is convenient for residential generators of solid waste to use the depot(s).

(h) Establish collection rates for residential solid waste from single family residences and single residential units in complexes of less than five units, that encourage waste prevention, reuse and recycling. The rates at a minimum, shall include the following elements:

(A) At least one rate for a container that is 21 gallons or less in size and costs less than larger containers; and

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(B) Rates shall be based on the average weight, as determined in paragraph (E) of this subsection, of solid waste disposed per container for various sizes of containers; and

(C) Rates, as calculated on a per pound disposed basis shall not decrease per pound with the increasing size of the container or the number of containers; and

(D) Rates per container service shall be established such that each additional container beyond the first container for each residential unit shall have a fee charged that is at least the same fee and no less than the first container; and

(E) Rates, calculated on a per pound disposed basis, shall be established by the city or county through development of their own per pound average weights for various container sizes by sampling and calculating the average weights for a cross section of containers within their residential service area.

(i) An on-going system to collect food waste, paper that is not recyclable because of contamination, and other compostable waste from commercial and institutional entities that generate large amounts of such wastes, and compost it at facilities in compliance with Department composting facility rules and local government regulations:

(A) Before diverting edible (unwanted) foods to be composted, a local government should consider how to encourage making them available:

(i) To charity for human consumption;

(ii) Or if charity channels are not available, to farmers for animal feed.

(B) A commercial composting program shall include the following elements:

(i) On-going promotion of the commercial compost program through written material or other effective formats directed to targeted commercial and institutional generators within the local government (e.g., grocery stores, restaurants, wholesale flower warehouses, hotels, businesses and institutions with food service);

(ii) To avoid problems relating to human health and the environment, periodic collection of food wastes and other compostable materials is required from commercial and institutional generators on an appropriate schedule.

(C) Any composting facility to which collected compostable material is taken shall comply with Department composting facility rules;

(D) On-site commercial and institutional composting should be considered if the location is appropriate, space is available and the entity is in compliance with Department composting facility rules and local government regulations.

(4) In addition to the requirements in sections (1) and (2) of this rule, each city with a population of 4,000 or more and any county responsible for the area within a Metropolitan Service District or the area between the city limits and the urban growth boundary of such city in any of the following wastesheds shall provide the opportunity to recycle rigid plastic containers if the conditions set forth in section (5) of this rule are met:

(a) Clackamas, Multnomah and Washington Counties, in aggregate, as a single wasteshed;

(b) Benton wasteshed;

(c) Clatsop wasteshed;

(d) Columbia wasteshed;

(e) Deschutes wasteshed;

(f) Douglas wasteshed;

(g) Hood River wasteshed;

(h) Jackson wasteshed;

(i) Josephine wasteshed;

(j) Lane wasteshed;

(k) Linn wasteshed;

(l) Marion wasteshed;

(m) Polk wasteshed;

(n) Wasco wasteshed; and

(o) Yamhill wasteshed.

(5) The opportunity to recycle rigid plastic containers is required within a wasteshed when a stable market price for rigid plastic containers, that equals or exceeds 75 percent of the necessary and reasonable collection costs for those containers, exists for such wasteshed.

(6) Each wasteshed shall prepare an individualized plan that identifies policies or programs specific to the wasteshed's local conditions to achieve the required recovery goals. The plan shall be available to the department upon the department's request. The plan shall be updated by December 31, 2006 and again by December 31, 2010. Clackamas, Multnomah and Washington Counties, in aggregate, may meet this requirement through the programs under ORS 459.340, 459.345, 459.350, and 459A.050.

(7) If a wasteshed does not achieve its 2005 or 2009 waste recovery goal, the wasteshed shall conduct a technical review of existing policies or programs and determine revisions to meet the recovery goal. The department shall, upon the request of the wasteshed, assist in the technical review. The wasteshed may request, and may assist the department in conducting, a technical review to determine whether the wasteshed goal is valid.

Stat. Auth.: ORS 459.045, 459A.025, 459A.100 - 459A.120 & 468.020

Stats. Implemented: ORS 459A.005, 459A.010 & 459A.665

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 8-2005, f. & cert. ef. 7-14-05

## 340-090-0045

### Wasteshed Programs for Two Percent Recovery Rate Credit

A wasteshed may implement one or more of the three following programs. For each program implemented, the wasteshed shall receive a two percent credit on the wasteshed's recovery rate, pursuant to OAR 340-090-0060(3).

(1) Waste Prevention Program. This program shall include:

(a) A wasteshed-wide program to provide general educational materials to residents about waste prevention and examples of things residents can do to prevent generation of waste; and

(b) Two of the following:

(A) Reduce the wasteshed annual per capita waste generation by two percent each year;

(B) Conduct a waste prevention media promotion campaign targeted at residential generators;

(C) Expand the education program in primary and secondary schools to include waste prevention and reuse;

(D) Household hazardous waste prevention education program;

(E) Local governments will conduct waste prevention assessments of their operations, or provide waste prevention assessments for businesses and institutions and document any waste prevention measures implemented;

(F) Conduct a material-specific waste prevention campaign for businesses throughout the wasteshed;

(G) Implement a Resource Efficiency Model City program;

(H) Conduct a material-specific waste prevention education campaign that focuses on a toxic or energy-intensive material;

(I) Local governments will implement programs to buy recycled-content products for their operations, consistent with procurement guidelines issued by the United States Environmental Protection Agency; or

(J) Local governments will implement programs for new construction and remodeling of local government buildings that incorporate recycled-content materials, energy conservation features, water conservation and stormwater management features and other elements to increase the resource efficiency and lower the environmental impact of these buildings.

(2) Reuse Program. This program shall include:

(a) A promotion and education campaign on the benefits and opportunities for reuse available to the public in the wasteshed; and

(b) Two of the following:

(A) Operate construction and demolition debris salvage programs with depots;

(B) Promote reuse programs offered by local resale businesses, thrift stores and equipment vendors, such as computer and photocopier refurbishers, to the public and businesses;

(C) Identify and promote local businesses that will take back white goods for refurbishing and resale to the public;

(D) Develop and promote use of waste exchange programs for the public and private sectors;

(E) Site accommodation for recovery of reusable material at transfer stations and landfills; or

(F) Sidewalk pickup or community fair program in cities over 4,000 population in the wasteshed.

(3) Residential Composting Program. This program shall include:

(a) Promotion of the residential composting program through public information and demonstration site or sites; and

(b) Two of the following:

(A) A program to encourage leaving grass clippings generated by lawn mowing on-site rather than bagging the clippings for disposal or composting;

(B) A composting program for local schools;

(C) An increase in availability of compost bins for residents; or

(D) Another program increasing a household's ability to manage yard trimmings or food wastes.

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(4) A watershed may receive, upon application to the Department of Environmental Quality, a recovery credit greater than two percent for a residential composting program. To receive the recovery credit under this paragraph, the watershed must provide quantitatively verifiable documentation of residential composting tonnage to the department. The documentation must show that more than two percent of the watershed's generated tonnage of solid waste is diverted from the wastestream by residential composting.

Stat. Auth.: ORS 459A.025 & 468.020

Stats. Implemented: ORS 459A.010

Hist.: DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 8-2005, f. & cert. ef. 7-14-05

## 340-090-0050

### Watershed Designation and Recovery Rates

The purpose of this rule is to define the watersheds as designated in ORS 459A.010, and state recovery rates that each watershed shall achieve and maintain:

(1) Baker watershed is all of the area within Baker County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 25 percent. (2) Benton watershed is all of the area within Benton County excluding the City of Albany and shall achieve a recovery rate of 45 percent for calendar years 2005 through 2008 and 50 percent for calendar year 2009 and subsequent years. (3) Clatsop watershed is all of the area within Clatsop County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 25 percent.

(4) Columbia watershed is all of the area within Columbia County and shall achieve a recovery rate of 28 percent for calendar years 2005 through 2008 and 32 percent for calendar year 2009 and subsequent years.

(5) Coos watershed is all of the area within Coos County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 30 percent.

(6) Crook watershed is all of the area within Crook County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 20 percent.

(7) Curry watershed is all of the area within Curry County and shall achieve and maintain a recovery rate for calendar year 2005 and subsequent years of 30 percent.

(8) Deschutes watershed is all of the area within Deschutes County and shall achieve a recovery rate of 32 percent for calendar years 2005 through 2008 and 45 percent for calendar year 2009 and subsequent years.

(9) Douglas watershed is all of the area within Douglas County and shall achieve a recovery rate of 35 percent for calendar years 2005 through 2008 and 40 percent for calendar year 2009 and subsequent years.

(10) Gilliam watershed is all of the area within Gilliam County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 20 percent.

(11) Grant watershed is all of the area within Grant County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 19 percent.

(12) Harney watershed is all of the area within Harney County and shall achieve a recovery rate of 30 percent for calendar years 2005 through 2008 and 40 percent for calendar year 2009 and subsequent years.

(13) Hood River watershed is all of the area within Hood River County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 25 percent.

(14) Jackson watershed is all of the area within Jackson County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 40 percent.

(15) Jefferson watershed is all of the area within Jefferson County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 25 percent.

(16) Josephine watershed is all of the area within Josephine County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 38 percent.

(17) Klamath watershed is all of the area within Klamath County and shall achieve a recovery rate of 15 percent for calendar years 2005 through 2008 and 20 percent for calendar year 2009 and subsequent years.

(18) Lake watershed is all of the area within Lake County and shall achieve a recovery rate of 8 percent for calendar years 2005 through 2008 and 10 percent for calendar year 2009 and subsequent years.

(19) Lane watershed is all of the area within Lane County and shall achieve a recovery rate of 45 percent for calendar years 2005 through 2008 and 54 percent for calendar year 2009 and subsequent years.

(20) Lincoln watershed is all of the area within Lincoln County and shall achieve a recovery rate of 19 percent for calendar years 2005 through 2008 and 20 percent for calendar year 2009 and subsequent years.

(21) Linn watershed is all of the area within Linn County, including the Cities of Albany and Mill City, and excluding the area within the City of Gates and the City of Idanha, and shall achieve a recovery rate of 40 percent for calendar year 2005 and subsequent years.

(22) Malheur watershed is all of the area within Malheur County and shall achieve a recovery rate of 21 percent for calendar years 2005 through 2008 and 22 percent for calendar year 2009 and subsequent years.

(23) Marion watershed is all of the area within Marion County and all of the area within the Cities of Gates, Idanha, and the city of Salem excluding the area within West Salem and Mill City and shall achieve a recovery rate of 37 percent for calendar years 2005 through 2008 and 54 percent for calendar year 2009 and subsequent years.

(24) Milton-Freewater watershed is all the area within the urban growth boundary of the City of Milton-Freewater and shall achieve a recovery rate of 22 percent for calendar years 2005 through 2008 and 25 percent for calendar year 2009 and subsequent years.

(25) Morrow watershed is all of the area within Morrow County and shall achieve a recovery rate of 18 percent for calendar years 2005 through 2008 and 20 percent for calendar year 2009 and subsequent years.

(26) Polk watershed is all the area within Polk County including the area within West Salem and excluding all the City of Willamina and shall achieve a recovery rate of 30 percent for calendar years 2005 through 2008 and 35 percent for calendar year 2009 and subsequent years.

(27) Sherman watershed is all of the area within Sherman County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 20 percent.

(28) Tillamook watershed is all of the area within Tillamook County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 30 percent.

(29) Umatilla watershed is all of the area within Umatilla County excluding the area within the urban growth boundary of the City of Milton-Freewater and shall achieve a recovery rate for calendar year 2005 and subsequent years of 20 percent.

(30) Union watershed is all of the area within Union County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 25 percent.

(31) Wallowa watershed is all of the area within Wallowa County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 20 percent.

(32) Wasco watershed is all of the area in Wasco County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 35 percent.

(33) Wheeler watershed is all of the area within Wheeler County and shall achieve a recovery rate for calendar year 2005 and subsequent years of 20 percent.

(34) Yamhill watershed is all of the area within Yamhill County and all of the area within the City of Willamina and shall achieve a recovery rate of 39 percent for calendar years 2005 through 2008 and 45 percent for calendar year 2009 and subsequent years.

(35) Clackamas, Multnomah and Washington Counties, in aggregate, as a single watershed shall achieve a recovery rate of 62 percent for calendar years 2005 through 2008 and 64 percent for calendar year 2009 and subsequent years.

Stat. Auth.: ORS 459A.025, 459.045 & 468.020

Stats. Implemented: ORS 459A.010

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 1-1986, f. & ef. 2-12-86; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); Renumbered from 340-060-0025; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 8-2005, f. & cert. ef. 7-14-05

## 340-090-0060

### Determination of Recovery Rates

(1) Recovery rates required in OAR 340-090-0050 shall be determined by the Department by dividing the total weight of material recovered by the sum of the total weight of the material recovered plus the total weight of municipal solid waste disposed that was generated in each respective watershed.

(2) Recovery rates shall include the following:

(a) All materials collected for recycling, both source separated or sorted from solid waste, including yard debris;

(b) Beverage containers collected under the requirements of ORS 459A.700 - 459A.740;

(c) Notwithstanding the foregoing, no material shall be counted toward the recovery rate if it is disposed of.

(3) Recovery rates may include a credit for each program listed in OAR 340-090-0045 for a year for which a watershed certifies to the



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Department that the program or programs have been implemented. No credit shall be received for a calendar year prior to 1997. In order for the wasteshed to receive a credit:

(a) All required components of a program must be in place and implemented in the geographic area(s) required by OAR 340-090-0045 during the entire calendar year for which the credit is claimed. If the chosen program component is seasonal, the component must be provided during the appropriate season(s) of the subject calendar year;

(b) On behalf of a wasteshed the county shall submit a report to the Department summarizing how each chosen program was implemented in the wasteshed for the calendar year for which a credit is claimed. The information shall be submitted, on a form provided by the Department, by February 28 of the year subsequent to that calendar year. The report shall include a certification from the county that the chosen program(s) met the requirements in OAR 340-090-0045.

(c) The Metropolitan Service District on behalf of Multnomah, Clackamas, and Washington counties and the cities therein, shall submit a report to the Department summarizing how each chosen program was implemented in the wasteshed for the calendar year for which a credit is claimed. The information shall be submitted to the Department, on a form provided by the Department, by February 28 of the year subsequent to that calendar year. The report shall include a certification from the Metropolitan Service District that the chosen program(s) met the requirements in OAR 340-090-0045;

(4) Recovery rates may include the composting or burning for energy recovery the material collected under sections (1) and (2) of this rule when there is not a viable market for recycling that material, provided that the following conditions are met:

(a) If the material is burned for energy recovery and then included in the recovery rate for Clackamas, Multnomah or Washington Counties in aggregate or for Benton, Lane, Linn, Marion, Polk or Yamhill County wastesheds, the same material, when burned as part of mixed solid waste, may be included in the recovery rate for a wasteshed that burns mixed solid waste for energy recovery. The amount of the material within the mixed solid waste that may be included in the recovery rate for energy recovery shall be determined by a waste composition study performed by the wasteshed at least every four years.

(b) Mixtures of materials that are composted or burned for energy recovery shall not be included in the recovery rate if more than half of the mixed materials by weight could have been recycled if properly source separated; and

(c) A place does not exist within a wasteshed that will pay for the material or accept it for free or a place does not exist outside of the wasteshed that will pay a price for the material that, at minimum, covers the cost of transportation of the material to market; and

(d) The appropriate county or Metropolitan Service District in the report required under OAR 340-090-0100 provides data on the weight, type of material and method of material recovery for material to be counted in the recovery rate under this section and written explanation of the basis for determining that a viable market did not exist for the wasteshed, including markets available within and outside of the wasteshed, transportation distances and costs, and market prices for the material if it were to be recycled as source separated material.

(5) Recovery rates shall not include the following:

(a) Industrial and manufacturing wastes such as boxboard clippings and metal trim that are recycled before becoming part of a product that has entered the wholesale or retail market, or any preconsumer waste;

(b) Metal demolition debris in which arrangements are made to sell or give the material to processors before demolition such that it does not enter the solid waste stream;

(c) Discarded vehicles or parts of vehicles that do not routinely enter the solid waste stream. Discarded vehicle parts that are received at recycling dropoff facilities operated as part of the general solid waste management system are not excluded from the recovery rate calculation;

(d) Commercial, industrial and demolition scrap metal, vehicles, major equipment and home or industrial appliances that are handled or processed for use in manufacturing new products and that do not routinely enter the solid waste stream through land disposal facilities, transfer stations, recycling depots or on-route collection programs;

(e) Material recovered for composting or energy recovery from mixed solid waste, except as provided in subsection (2)(a) and section (4) of this rule;

(f) Mixed solid waste burned for energy recovery, except as provided by subsection (4)(a) of this rule.

(6) For the purposes of calculating the recovery rate the following shall not be included in the total solid waste disposed:

(a) Sewage sludge or septic tank and cesspool pumpings;

(b) Solid waste disposed of at an industrial solid waste disposal site;

(c) Industrial waste, ash, inert rock, dirt, plaster, asphalt and similar material if delivered to a municipal solid waste disposal site and if the disposal site operator keeps a record of the weight and wasteshed of origin for such materials delivered and reports the weight and appropriate wasteshed in the reports required to be submitted to the Department under OAR 340-090-0100(3);

(d) Solid waste received at an ash monofill from an energy recovery facility; and

(e) Any solid waste not generated within the state of Oregon.

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Stats. Implemented: ORS 459A.010

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 8-2005, f. & cert. ef. 7-14-05

## 340-100-0002

### Adoption of United States Environmental Protection Agency Hazardous Waste and Used Oil Management Regulations

(1) Except as otherwise modified or specified by OAR 340, divisions 100 to 106, 109, 111, 113, 120, 124 and 142 the rules and regulations governing the management of hazardous waste, including its generation, transportation, treatment, storage, recycling and disposal, prescribed by the United States Environmental Protection Agency in **Title 40 Code of Federal Regulations, Parts 260 to 266, 268, 270, 273 and Subpart A and Subpart B of Part 124** promulgated through July 1, 2002, and including the rule promulgated July 24, 2002 at 67 Federal Register 48393, except the amendments to **40 CFR Parts 264, 265 and 270** as promulgated at 63 Federal Register 56710-56735, October 22, 1998, and 65 Federal Register 30886-30913, May 15, 2000, are adopted by reference and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080 and 466.090 to 466.215.

(2) Except as otherwise modified or specified by OAR 340, division 111, the rules and regulations governing the standards for the management of used oil, prescribed by the United States Environmental Protection Agency in **Title 40 Code of Federal Regulations, Part 279 promulgated through July 24, 2002**, are adopted by reference into Oregon Administrative Rules and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080 and 466.090 to 466.215.

**COMMENT:** The Department uses the federal preamble accompanying the federal regulations and federal guidance as a basis for regulatory decision-making.

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

Stat. Auth.: ORS 465.009, 466.020 & 465.505

Stat. Implemented: ORS 465.003, 465.009, 466.005, 466.075, 466.105 & 465.505

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 10-1987, f. & ef. 6-11-87; DEQ 23-1987, f. & ef. 12-16-87; DEQ 19-1988, f. & cert. ef. 7-13-88; DEQ 12-1989, f. & cert. ef. 6-12-89; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91); DEQ 24-1992, f. 10-23-92, cert. ef. 11-1-92; DEQ 11-1993, f. & cert. ef. 7-29-93; DEQ 6-1994, f. & cert. ef. 3-22-94; DEQ 31-1994(Temp), f. 12-6-94, cert. ef. 12-19-94; DEQ 11-1995, f. & cert. ef. 5-19-95; DEQ 12-1996, f. & cert. ef. 7-31-96; DEQ 14-1997, f. & cert. ef. 7-23-97; DEQ 11-1998, f. & cert. ef. 6-26-98; DEQ 26-1998(Temp), f. & cert. ef. 11-3-98 thru 3-19-99; DEQ 4-1999, f. & cert. ef. 3-19-99; DEQ 10-2000, f. & cert. ef. 7-21-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 13-2002, f. & cert. ef. 10-9-02; DEQ 13-2003, f. & cert. ef. 10-24-03; DEQ 8-2005, f. & cert. ef. 7-14-05

## 340-102-0065

### Hazardous Waste Generator Fees

(1) Each person generating more than 100 kilograms (220 pounds) of hazardous waste, or more than 1 kilogram (2.2 pounds) of acutely hazardous waste, in any calendar month, or accumulating more than 1,000 kilograms (2,200 pounds) of hazardous waste at any time in a calendar year, shall be subject to an annual hazardous waste generation fee. Fees shall be assessed annually for hazardous waste management activities in the previous year.

(2) A late charge equal to ten percent of the fee due shall be assessed if the fees are not received by the Department by the due date shown on the invoice. An additional late charge of ten percent of the unpaid amount shall also be assessed each 30 days that the invoice remains unpaid. After 90 days no further Department late charges shall be assessed; however, such invoices may be referred to the Department of Revenue for collection or collected in Small Claims Court. Accounts referred to the Department of Revenue for collection or collected in Small Claims Court shall be increased by 20 percent of the unpaid amount or \$100, whichever is greater, to recover a portion of the costs for referral or collection.

(3) A base hazardous waste generation fee, expressed in mills per kilogram, shall be fixed by rule by the Commission, based on reports from the

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Department on the total amount of hazardous waste generated in the state and the methods by which the waste was managed:

(a) The Department may use the base fee, or any lesser fee, to determine annual generation fee invoices. Any increase in the base fee must be fixed by rule by the Commission;

(b) Beginning with hazardous waste generated and managed during 2003, the base fee is fixed at 110 mills per kilogram (\$110 per metric ton).

(4) Each person's hazardous waste generation fee shall be calculated by multiplying the base fee by the weight of each hazardous waste stream and by the fee factors listed below for the management method reported in the annual generation report (OAR 340-102-0041) as follows: [Table not included. See ED. NOTE.]

(5) The maximum annual hazardous waste generation fee on any initial fee invoice shall be limited to \$27,500.

(6) Effective January 1, 1997, in addition to the annual hazardous waste generation fee, each hazardous waste generator shall be subject to an annual hazardous waste activity verification fee, upon billing by the Department, as follows:

(a) Large Quantity Generator: \$525;

(b) Small Quantity Generator: \$300;

(c) Conditionally Exempt Small Quantity Generator: No Fee.

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

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

Stat. Auth.: ORS 466.165 & 468.020

Stats. Implemented: ORS 466.165

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 14-1987, f. & ef. 7-28-87; DEQ 11-1988, f. & cert. ef. 5-19-88; DEQ 19-1989(Temp), f. & cert. ef. 7-31-89 (and corrected 8-3-89); DEQ 33-1989, f. & cert. ef. 12-14-89; DEQ 13-1991, f. & cert. ef. 8-5-91; DEQ 11-1992, f. & cert. ef. 6-9-92; DEQ 2-1994, f. & cert. ef. 2-2-94; DEQ 14-1997, f. & cert. ef. 7-23-97; DEQ 11-1998, f. & cert. ef. 6-26-98; DEQ 8-2005, f. & cert. ef. 7-14-05

## 340-141-0005

### Definitions as used in this Division

(1) "Average Most Probable" spill, release or discharge means the probable volume of oil that may spill as defined in a plan considering the history of spills from similar facilities or vessels of the same class operating on the west coast of the United States. It may also be defined as the lesser of one percent of the worst case spill, release or discharge, or 50 barrels, when used as a planning volume.

(2) "Best Achievable Protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures and operational methods that provide the greatest degree of protection available considering:

(a) The additional protection provided by the measures;

(b) The technological feasibility of the measures; and

(c) The cost of the measures.

(3) "Best Achievable Technology" means the technology that provides the greatest degree of protection, taking into consideration processes that are currently in use, processes that have been developed or processes that could feasibly be developed with reasonable expenditures on research and development. In determining what is best achievable technology, the Director will consider the effectiveness, engineering feasibility and commercial availability of the technology.

(4) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder or granular form capable of being conveyed by a pipe, bucket, chute or belt system.

(5) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel of 300 or more gross tons. "Cargo vessel" does not include a vessel used solely for commercial fish harvesting.

(6) "Columbia River" means the length of the Columbia River from where it enters the State of Oregon from the State of Washington to the point where it leaves the state at river mile zero at the Pacific Ocean.

(7) "Commercial Fish Harvesting" means taking food fish with any gear unlawful for angling under ORS 506.006, taking food fish in excess of the limits permitted for personal use, or taking food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels.

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

(9) "Contingency Plan" or "Plan" means an oil spill prevention and emergency response plan required under ORS 468B.345.

(10) "Contract or other approved means" in a response or a plan means:

(a) A written contract between a covered vessel or facility owner or operator and an oil spill removal organization that identifies and ensures the

availability of specified personnel and equipment within stipulated response times in specified oil spill response Zones;

(b) Certification by the vessel or facility owner or operator that specified personnel and equipment are owned, operated or under the direct control of the vessel or facility owner or operator and are available within stipulated response times in specified oil spill response Zones;

(c) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment that are available to respond to an oil spill within stipulated response times in specified oil spill response Zones; or

(d) A written document that:

(A) Identifies personnel, equipment and services capable of being provided by the oil spill removal organization within stipulated response times in specified oil spill response Zones;

(B) Acknowledges that the oil spill removal organization intends to commit the identified resources in the event of an oil spill;

(C) Permits the commission to verify the availability of the identified oil spill removal resources through tests, inspections and exercises; and

(D) Is referenced in an oil spill contingency plan for the vessel or facility.

(11) "Covered vessel" means a tank vessel, self-propelled tank vessel, cargo vessel or passenger vessel.

(12) "Dedicated response vessel" means a vessel that limits service exclusively to recovering and transporting spilled oil, tanker escorting, deploying oil spill response equipment, supplies and personnel, spill response-related training, testing, exercises and research or other oil spill removal and related activities.

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

(14) "Director" means the Director of the Department of Environmental Quality.

(15) "Discharge" means any emission other than natural seepage of oil, whether intentional or unintentional. "Discharge" includes but is not limited to spilling, leaking, pumping, pouring, emitting, emptying or dumping oil.

(16) "Drill" means the simulated performance of a spill response or task predicted in a plan.

(17) "Effective Daily Recovery Capacity" or "EDRC" means the factor used to estimate limitations on equipment efficiency from variables such as sea state, current velocity or visibility.

(18) "Field Document" means a simplified response plan for onsite use in the event of a spill, summarizing key notification and action elements.

(19) "Facility" means a pipeline or any structure, group of structures, equipment or device, other than a vessel located on or near navigable waters of a state, that is used for producing, storing, handling, transferring, processing or transporting oil in bulk and that is capable of storing or transporting 10,000 or more gallons of oil per day. "Facility" does not include:

(a) A railroad car, motor vehicle or other rolling stock while transporting oil over the highways or rail lines of this state;

(b) An underground storage tank regulated by the Department of Environmental Quality or a local government under ORS 466.706 – 466.882 and 466.994; or

(c) Any structure, group of structures, equipment or device, other than a vessel located on or near navigable waters of a state, that is used for producing, storing, handling, transferring, processing or transporting 10,000 gallons or more of oil per day but does not receive oil from tank vessels, barges or pipelines.

(20) "Initial assessment" is a task assigned to first responders who are participating with the Department in a Unified Command or Incident Command System, and includes the following tasks:

(a) Verifying the spill location;

(b) Establishing the type of incident based on products and conditions;

(c) Confirming or correcting the reported quantity released or area extent of the contamination;

(d) Reporting the efficacy of the initial containment;

(e) Projecting immediate resource needs to control the release; and

(f) Reporting local knowledge about the probable impacts of the release.

(21) "Interim Storage Site" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site. Interim storage sites include trucks, barges and other vehicles used to store recovered oil or oily waste until transport begins.

(22) "Maritime Association" means an association or cooperative of marine terminals, facilities, vessel owners, vessel operators, vessel agents or

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other maritime industry groups that provides oil spill response planning and spill related communications services within the state.

(23) "Maximum Extent Practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures and best achievable technology considering the effectiveness, engineering feasibility, commercial availability, safety and cost of the measures.

(24) "National Incident Management System" or "NIMS", as established by the Homeland Security Presidential Directive 5 of February 28, 2003 is a consistent nationwide template to enable Federal, State, local and tribal governments and private-sector and nongovernmental organizations to work together effectively and efficiently to prepare for, prevent, respond to and recover from domestic incidents, regardless of cause, size or complexity, including acts of catastrophic terrorism.

(25) "Navigable Waters" means the Columbia River, the Willamette River up to Willamette Falls, the Pacific Ocean and estuaries to the head of tide water.

(26) "Non-Persistent Oil" means those petroleum products with physical characteristics less dense than persistent oils, also referred to as Group I petroleum products.

(27) "Northwest Area Contingency Plan" means the regional emergency response plan developed in accordance with federal requirements and adopted as an annex to the State of Oregon all hazard plan as required by ORS 466.620.

(28) "Offshore Facility" means any facility located in, on or under any of the navigable waters of the state.

(29) "Oil" or "Oils" means oil including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse, and any other petroleum-related product.

(30) "Oil Spill Contingency Response Planning Standards" means the Department's standards for reviewing oil spill contingency plans. The planning standards represent the Department's best general estimate of types and quantities of personnel and equipment required to ensure adequate response to any location.

(31) "Oil Spill Response Planning Zones" are geographic areas of the State for which the Department has established minimum planning standards. The Oil Spill Planning Zones are as follows:

(a) "Columbia River Zone" includes the Columbia River from where it enters the State of Oregon from the State of Washington to the point where it leaves the state at river mile zero at the Pacific Ocean, and extending 25 miles inland adjacent to the waterway. It is divided into four sub-Zones:

(A) "Columbia River, Upper River sub-Zone" means the Columbia River from the point where it enters Oregon from the State of Washington to the Bonneville Dam;

(B) "Columbia River, Portland sub-Zone" means the Willamette River below Willamette Falls, and the Columbia River between the Bonneville Dam and river mile 85 at St. Helens;

(C) "Columbia River, Rainier sub-Zone" means the Columbia River between river mile 85 at St. Helens and river mile 40 at Bugby Hole; and

(D) "Columbia River, Astoria sub-Zone" means the Columbia River between river mile 40 at Bugby Hole and river mile zero at the Pacific Ocean.

(b) "Coastal Bays Zone" means all ports on the Oregon coast where covered vessels make calls and extending inland 25 miles;

(c) "Open Ocean Zone" is the Pacific Ocean from the mark of average high tide out to the three mile limit of Oregon's authority; and

(d) "Inland Zone" means areas of Oregon where oil spill risks can be reduced through planning and contingency strategies, and not included in another listed Planning Zone.

(32) "Oily Waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

(33) "Onshore Facility" means any facility, located in, on or under any land of the state, other than submerged land, that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or adjoining shorelines.

(34) "Owner or Operator" means:

(a) In the case of an onshore or offshore facility, any person owning or operating the facility.

(b) In the case of a vessel, any person owning, operating or chartering by demise, the vessel.

(c) In the case of an abandoned onshore or offshore facility, or vessel, the person who owned or operated the facility or vessel immediately before its abandonment.

(35) "Passenger vessel" means a ship of 300 or more gross tons carrying passengers for compensation.

(36) "Persistent Oil" means those petroleum products with environmental degradation resistance or viscosity characteristics equal to and greater than fuel oil having a specific gravity of more than 0.8, also referred to as Group II and higher petroleum products.

(37) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

(38) "Person Having Control Over Oil" includes, but is not limited to, any person using, storing or transporting oil immediately prior to entry of such oil into the navigable waters of the state, and specifically includes carriers and bailees of such oil.

(39) "Pipeline" means a facility, including piping, compressors, pump stations and storage tanks used to transport oil between facilities or between facilities and tank vessels.

(40) "Primary Response Contractor" means a response contractor that is identified in a required plan and is committed to the plan holder by contract or other approved means.

(41) "Region of Operation" with respect to the holder of a contingency plan means the area where the operations that require a contingency plan are located.

(42) "Resident" means that the resource is kept ready for use at an address within the planning Zone (or sub-Zone if planning standards specify) in which the facility or vessel is located.

(43) "Response Contractor" means an individual, organization, association, or cooperative that provides or intends to provide equipment, personnel for oil spill containment, cleanup or removal activities.

(44) "Self-propelled tank vessel" means a tank vessel that is capable of moving under its own power.

(45) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.

(46) "Spill or release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of any oil or hazardous material into the air or into or on any land or waters of the state, as defined in ORS 468B.005, except as authorized by a permit issued under ORS chapter 454, 459, 459A, 468, 468A, 468B or 469, 466.005 to 466.385, 466.990(1) and (2) or 466.992 or federal law or while being stored or used for its intended purpose.

(47) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue. "Tank vessel" does not include:

(a) A vessel carrying oil in drums, barrels or other packages;

(b) A vessel carrying oil as fuel or stores for that vessel; or

(c) An oil spill response barge or vessel.

(48) "Trip" means travel to the appointed destination and return travel to the point of origin within the navigable waters of the State of Oregon.

(49) "Waters of the State" includes lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(50) "Worst case spill" means:

(a) In the case of a vessel, a spill of the entire cargo and fuel of the tank vessel complicated by adverse weather conditions.

(b) In the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

Stat. Auth.: ORS 468.020 & 468B.345 - 468B.405

Stats. Implemented: ORS 468B.300 - 468B.500

Hist.: DEQ 2-2003, f. & cert. ef. 1-31-03; DEQ 8-2005, f. & cert. ef. 7-14-05

## 340-141-0010

### Program Administration and Compliance Fees

(1) All offshore and onshore facilities required to develop oil spill prevention and emergency response plans under ORS 468B.345 will be assessed an annual fee of \$4,500. The fee is due in July, and covers the 12 month period commencing July 1.

(2) Covered vessels and facilities are subject to the following fees:

(a) Self-propelled tank vessels of more than 300 gross tons: \$836 per trip;

(b) Self-propelled tank vessels of 300 gross tons or less: \$42 per trip;



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(c) Tank vessels and barges that are not self-propelled: \$42 per trip; and

(d) Cargo vessels: \$48 per trip.

(3) Fees assessed under section (2) must be remitted to the Department within 30 days of the conclusion of each trip.

(4) Moneys collected under this rule will be deposited in the State Treasury to the credit of the Oil Spill Prevention Fund established by ORS 468B.410.

Stat. Auth.: ORS 468.020 & 468B.345 - 468B.500

Stats. Implemented: ORS 468B.405

Hist.: DEQ 2-2003, f. & cert. ef. 1-31-03; DEQ 8-2005, f. & cert. ef. 7-14-05

## 340-141-0140

### Plan Content Requirements

(1) Submittal Agreement. Each plan must contain a submittal agreement that:

(a) Includes the name, address and phone number of the submitting party;

(b) Verifies acceptance of the plan, including any incorporated contingency plans, by the owner or operator of the facility or covered vessel by either signature of the owner or operator or a person with authority to bind the corporation that owns or operates the facility or covered vessel;

(c) Commits to execution of the plan, including any incorporated contingency plans, by the owner or operator of the facility or covered vessel, and verifies authority for the plan holder to make appropriate expenditures in order to execute plan provisions; and

(d) Includes:

(A) In the case of a facility, the name, location including latitude, longitude and river mile, and address of the facility, type of facility, starting date of operations, types of oils (see definition of oil) handled, volume of oil stored and maximum volume of oil capable of being stored.

(B) In the case of a covered vessel, the vessel's name, the name, location and address of the owner or operator, official identification code or call sign, country of registry, common ports of call in Oregon, type of oils (see definition of oil) handled, volume of oil transported as fuel and expected period of operation in state waters.

(C) In the case of a covered vessel enrolled in a cooperative or maritime association plan, the vessel may provide evidence of coverage in lieu of paragraph (B) of this subsection.

(2) Amendments. Each plan must include a log sheet to record amendments to the plan. The log sheet must be placed at the front of the plan. The log sheet must provide for a record of the section amended, the date that the old section was replaced with the amended section, verification that the Department was notified of the amendment pursuant to OAR 340-141-0220(3) and the initials of the individual making the change. A description of the amendment and its purpose must also be included in the log sheet, or filed in the form of an amendment letter immediately after the log sheet.

(3) Table of Contents. Each plan must include a detailed table of contents based on chapter, section, appendix numbers and titles and tables and figures. If the plan is an integrated plan used to also satisfy USCG and USEPA requirements, a cross reference must be included.

(4) Purpose and Scope. Each plan must describe the purpose and scope of that plan, including:

(a) The region of operation covered by the plan;

(b) The onshore facility, offshore facility or covered vessel operations covered by the plan; and

(c) The size and type of the average most probable spill and the worst case spill from the facility or covered vessel.

(5) Updates. Each plan must describe the events or time periods that will trigger updates of the plan.

(6) Implementation Strategy. Each plan must present a strategy for ensuring use of the plan for spill response and cleanup operations as required by OAR 340-141-0210.

(7) Spill Response System. Each plan must describe the organization of the spill response system, including all task assignments anticipated by the end of the first full operational period, or necessary to manage the resources required by the 12 hour planning standard, given a response to an Average Most Probable Discharge. Plans must use a National Incident Management System (NIMS) incident management system, as described in the Northwest Area Contingency Plan (NWACP).

(8) Contractor Identification. Each plan must identify the primary response contractor and subcontractors (except equipment rentals or supply vendors) whose services are bound to the plan by a contract or other approved means:

(a) If a plan holder is a member of an oil spill response cooperative and relies on that cooperative to perform or supplement its response operations within the regions of operations covered by the plan, the plan must state the cooperative's name, address, phone number and response capability. The plan must also include proof of cooperative membership; or

(b) If a plan holder is not a member of an oil spill response cooperative, for each contractor, the plan must state that contractor's name, address, phone number or other means of contact at any time of the day, and response capability (e.g., land spills only). For each contractor, the plan must include a letter of intent signed by the contractor which indicates the contractor's commitment to respond within the specified time period, with personnel and equipment listed in (12) and (13) of this section. Copies of written contracts or agreements with contractors must be available for inspection, if requested by the Department.

(9) Relationship to Other Plans. Each plan must briefly describe its relation to all applicable local, state, regional and federal government spill response plans. The plan must describe how the plan holder's response organization will be integrated into the Northwest Area Contingency Plan.

(10) Spill Detection. Each plan must list procedures that will be used to detect and document the presence and size of a spill, including methods which are effective during low visibility conditions. The plan must also describe the use of mechanical or electronic monitoring or alarm systems (including threshold sensitivities) used to detect oil discharges into adjacent land or water from tanks, pipes, manifolds and other transfer or storage equipment.

(11) Notifications. Each plan must describe procedures that will be taken to immediately notify appropriate parties that a spill has occurred.

(a) The plan holder must maintain a notification call out list that must be available for inspection upon the request of the Department, and that:

(A) Provides a contact at any time of the day for all spill response personnel identified under section (7) of this rule, including the contact's name, position title, phone number or other means of contact for any time of the day, and an alternate contact in the event the individual is unavailable;

(B) Lists the name and phone number of all government agencies that must be notified in the event of an oil spill pursuant to requirements under ORS 466.635; and

(C) Establishes a clear order of priority for immediate notifications.

(b) The plan must identify a central reporting office or individual who is responsible for implementing the call out process.

(12) Response Personnel. Each plan must describe the personnel, including contract personnel available, to respond to an oil spill, including:

(a) A job description for each type of spill response position needed as indicated in the spill response organization scheme addressed in section (7) of this rule, or a reference to a recognized NIMS position;

(b) The number of personnel available to perform the duties of each type of spill response position;

(A) This number must be equal to or greater than the number of persons necessary to sustain a response to the worst case spill defined in the plan.

(B) If 24 hour operations are expected, the number of persons available to staff the ICS must be multiplied by the proposed number of operational periods (shifts).

(c) Arrangements for pre-positioning personnel at strategic locations that will meet criteria pursuant to OAR 340-141-0190(3)(d); and

(d) The type and frequency of spill response operations and safety training that each individual in a spill response position receives to attain the level of qualification demanded by their job description.

(13) Equipment and spill response resources. Each plan must describe equipment and spill resources as follows:

(a) Each plan must list all resident equipment and resident dedicated response vessels used for oil containment, recovery, removal, shoreline and adjacent lands cleanup and wildlife rescue and rehabilitation. Each plan must also list all relied upon communication tools. The Department will accept information about equipment by reference if the equipment is being provided through a primary response contractor as part of the plan. The Department may request information about the condition and date of manufacture of any listed and referenced equipment to further evaluate its applicability to the planning standards or a response.

(b) For resident equipment and vessels listed under subsection (a) of this section that are not owned by or available exclusively to the plan holder, the plan must also estimate the extent that other contingency plans rely on the same equipment.

(c) For all resident oil containment and recovery equipment, the plan also must include equipment make and model, the manufacturer's nameplate

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capacity of the response equipment, the EDRC (in barrels per day) and applicable design limits (e.g., maximum wave height capability, suitability for inland waters or open ocean).

(d) Based on information described in subsection (c) of this section, the plan must state the maximum amount of oil that could be recovered per 24-hour period with the equipment used as it is designed.

(e) For purposes of determining plan adequacy under OAR 340-141-0190, and to assess realistic capabilities based on potential limitations by weather, sea state, and other variables, the Department will use the data presented in subsections (c) and (d) of this section to apply a higher efficiency factor for equipment listed in a plan if that plan holder provides adequate evidence that the higher efficiency factor is warranted for particular equipment or if the United States Coast Guard has approved a higher efficiency rating.

(f) The plan must provide arrangements for pre-positioning of oil spill response equipment at strategic locations that will meet response time criteria pursuant to OAR 340-141-0190(3)(d).

(g) When calculating the delivery time of equipment to a spill staging area, the plan must use travel speeds consistent with federal speed predictions for the equipment being moved.

(14) Communications. Each plan must describe the communication systems used for spill notification and response operations, including:

(a) Communication procedures that identify who will be responsible for the function, to whom and from whom communication will be established and any special instructions;

(b) The communication function (e.g., ground-to-air) assigned to each channel or frequency used;

(c) The maximum geographic range for each type of communications equipment used; and

(d) The communication system compatibility with key spill response agencies.

(15) Response Operation Sites. Each plan must describe the process used by the plan holder to establish sites needed for spill response operations, including location or location selection criteria for an incident command post, a communications center if located away from the command post and equipment and personnel staging areas.

(16) Response Flow Chart or Timeline. Each plan must describe the response process by:

(a) Presenting a flowchart or decision tree describing the procession of each major stage of spill response operations from spill discovery to completion of cleanup. The flowchart or decision tree must describe the general order and priority in which key spill response activities are performed; and

(b) Describing all key spill response operations in checklist forms, to be used by spill response managers in the event of an oil spill.

(17) Authorities. Each plan must describe responsible authorities by:

(a) Listing the local, state and other government authorities responsible for the emergency procedures peripheral to spill containment and cleanup; and

(b) Describing the plan holder's role in these emergency operation procedures before the proper authorities arrive, including but not limited to, control of fires and explosions, rescue activities, access restriction to the spill impact area and site security.

(18) Damage Control. Each plan must describe equipment and procedures to be used by the facility or covered vessel personnel to minimize the magnitude of the spill and minimize structural damage that could increase the quantity of oil spilled.

(a) For facilities, damage control procedures must include methods to slow or stop pipeline, storage tank, and other leaks, and methods to achieve immediate emergency shutdown.

(b) For tank vessels, damage control procedures must include methods and onboard equipment to achieve vessel stability and prevent further vessel damage, slow or stop pipe, tank, and other leaks and achieve emergency shutdown during oil transfer.

(c) For other covered vessels, damage control procedures must address methods to achieve vessel stability and slow or stop leaks from fuel tanks and lines.

(19) Containment. Each plan must describe, in detail, any nonstandard methods specific to the plan to contain spilled oil and recover it from the environment. When a plan calls for the use of methods that have not been expressly approved by the Department, the description of the proposed options must include:

(a) The surveillance methods expected to be used to detect and track the extent and movement of the spill; and

(b) A description of methods to be used to contain and remove oil that will be effective for environmentally sensitive locations included in the Zone, or Zones, for which the plan is written.

(20) Response Time. Each plan must briefly describe initial equipment and personnel deployment activities that will accomplish the response standard listed in OAR 340-141-0190(e)(d) and provide:

(a) An estimate of the actual execution time;

(b) The specific location in the Zone where the resident required response equipment is stored; and

(c) The source and management of personnel to deploy the initial response equipment.

(21) Chemical Agents. If the plan holder proposes to use dispersants, coagulants, bioremediants or other chemical agents for response operations under certain conditions, the plan must describe:

(a) Type and toxicity of chemicals, supplemented with material safety data sheets (MSDS) for each product;

(b) The conditions under which the chemicals will be applied, in conformance with all applicable local, state and federal requirements, including the Northwest Area Contingency plan and OAR 340-141-0020;

(c) Methods of deployment; and

(d) Location and accessibility of supplies and deployment equipment.

(22) In Situ-Burning. If the plan holder proposes to use in-situ burning for response operations, the plan must describe:

(a) Type of burning operations;

(b) Conditions under which burning will be applied in conformance with all applicable local, state and federal requirements, including the Northwest Area Contingency plan and OAR 340-264-0030 to 0040;

(c) Methods of application; and

(d) Location and accessibility of supplies and deployment equipment.

(23) Environmental Protection. Each plan must describe how environmental protection will be achieved, including:

(a) Protection of sensitive shoreline and island habitat by diverting or blocking oil movement;

(b) Priorities for sensitive area protection in the region of operation covered by the plan as provided in a Geographic Response Strategy of the Northwest Area Contingency Plan, or designated by the Department;

(c) Rescue and rehabilitation of birds, marine mammals and other wildlife contaminated or otherwise affected by the oil spill; and

(d) Measures taken to reduce damages to the environment caused by shoreline and adjacent land cleanup operations.

(24) Interim Storage. Each plan that has identified that oil will be recovered must plan for the storage of the oil and combined oily waste material potentially created.

(a) Each plan must describe site criteria and methods used for interim storage of oil recovered and oily wastes generated during response and cleanup operations, including sites available within the facility. Interim storage methods and sites must be designed to prevent contamination of the storage area by recovered oil and oily wastes.

(b) If use of interim storage sites will require approval by local, state or federal officials, the plan must include information that could expedite the approval process, including a list of appropriate contacts and a brief description of procedures to follow for each applicable approval process.

(c) Interim storage and permanent disposal methods and sites must be sufficient to sustain support for oil recovery operations and manage the entire volume of oil recovered and oily wastes generated.

(d) Interim storage and permanent disposal methods and sites must comply with all applicable local, state and federal requirements.

(25) Health and Safety. Each plan must describe procedures to protect the health and safety of oil spill response workers, and other individuals on-site. Provisions for training, decontamination facilities, safety gear and a safety officer position must be addressed.

(26) Post Spill Review. Each plan must explain post-spill review procedures, including methods to review both the effectiveness of the plan and the need for plan amendments. Post-spill procedures must provide for a debriefing with the Department that will include any newly recognized need to amend the plan and list of any other lessons learned.

(27) Drills and Exercises. All approved plans must be verified by drills and exercises. Each plan must describe the schedule and type of drills and other exercises that will be practiced to ensure readiness of the plan elements, including drills that satisfy OAR 340-141-0200 (3).

(a) The plan holder must test and document internal call out procedures at least once every 90 calendar days. The plan holder must retain records of these drills for at least three years and make them available for Department review upon request.

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(b) The plan holder must notify the Department of drills and exercises, at least 60 days before full deployment and tabletop drills, and 10 days prior to equipment exercises. Prior notice to the Department is not required before notification drills and internal phone number verification exercises.

(c) The plan holder must send post drill reports for all tabletop exercises or deployment drills to the Department no later than 60 days after the completion of the drill or exercise. The executive summary from a National Preparedness for Response Exercise Program (N-PREP) report may be submitted to meet this requirement when the exercise has been designed by the N-PREP staff.

(28) Risk Variables. Each plan must list the spill risk variables within the region of operation covered by the plan, including:

(a) Each plan for a facility must list the following:

(A) Types, physical properties and amounts of oil handled;

(B) A written description and map indicating site topography, stormwater and other drainage systems, mooring areas, pipelines, tanks, and other oil processing, storage and transfer sites and operations;

(C) A written description of sites or operations with a history of or high potential for oil spills, including key areas that pose significant navigation risk within the region of operation covered by the plan; and

(D) Methods to reduce spills during transfer operations, including overflow prevention.

(b) Each plan for a covered vessel must list the following:

(A) Types, physical properties and amounts of oil handled;

(B) A written description and diagram showing cargo, fuel and ballast tanks; and piping, power plants and other oil storage and transfer sites and operations; and

(C) A written description of operations with a history of or high potential for oil spills, including key areas that pose significant navigation risks within the region of operation covered by the plan.

(29) Environmental Variables. Each plan must list the environmental variables within the region of operation covered by the plan. Facility plans required to include river or coastal areas must identify the environmental variables from the probable point of release to the point the oil could travel in 24 hours in a current of four knots. Vessel contingency plans must encompass the entire length of the Oregon waterway in the Zone or sub-Zone entered. All plans must describe:

(a) Natural resources, including coastal and aquatic habitat types and sensitivity by season, breeding sites, presence of state or federally listed endangered or threatened species and presence of commercial and recreational species;

(b) Public resources, including public beaches, water intakes, drinking water supplies and marinas;

(c) Seasonal hydrographic and climatic conditions; and

(d) Physical geographic features, including relative isolation of coastal regions, beach types, and other geological characteristics. Plans may reference numbered Geographic Response Plan strategies (GRPs) in the Northwest Area Contingency Plan when identifying individual environmental features.

(30) Logistical Resources. Each plan must list the logistical resources within the region of operation covered by the plan, including facilities for fire services, medical services and accommodations; and shoreline access areas, including boat launches.

(31) Response Strategy Outline. Each plan must include a statement of the intended response activities. This statement must describe how the plan resources must be applied to adequately respond during the initial phase of the response to an average most probable and worst case spill, release or discharge. The Response Strategy Outline must begin with a description of the situation to be managed, and must describe:

(a) Deployment of resources and estimates of response times;

(b) The intended result of the activity for each person listed in section (7) and (12) of this section;

(c) Command and control arrangements;

(d) Required coordination; and

(e) Probable obstacles and an estimate of oil movement during the first 72 hours.

(32) Financial Responsibility. Each plan must provide evidence that the facility or vessel is in compliance with federal financial responsibility requirements pursuant to ORS 468B.390.

(33) Technical Terms Glossary. Each plan must include a glossary of technical terms and abbreviations used in the plan.

Stat. Auth.: ORS 468.020 & 468B.395

Stats. Implemented: ORS 468B.345 - 468B.390

Hist.: DEQ 2-2003, f. & cert. ef. 1-31-03; DEQ 8-2005, f. & cert. ef. 7-14-05

## 340-142-0005

### Definitions as Used in This Division Unless Otherwise Specified

(1) "Barrel" means 42 U.S. gallons at 60 degrees Fahrenheit.

(2) "Cleanup" means the containment, collection, removal, treatment or disposal of oil or hazardous material; site restoration; and any investigations, monitoring, surveys, testing and other information gathering required or conducted by the Department.

(3) "Cleanup Costs" means all costs associated with the cleanup of a spill or release incurred by the state, its political subdivision or any person with written approval from the Department when implementing ORS 466.205, 466.605 to 466.680, 468B.990(3) and (4) and 466.995 or 468B.320.

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

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

(6) "Director" means the Director of the Department of Environmental Quality.

(7) "Dry cleaning facility" means any active or inactive facility located in this state that is or was engaged in dry cleaning apparel and household fabrics for the general public, and dry stores, other than a:

(a) Facility located on a United States military base;

(b) Uniform service or linen supply facility;

(c) Prison or other penal institution; or

(d) Facility engaged in dry cleaning operations only as a dry store and selling less than \$50,000 per year of dry cleaning services.

(8) "Having Control Over Any Oil or Hazardous Material" includes, but is not limited to using, handling, processing, manufacturing, storing, treating, disposing or transporting oil or hazardous material. During transport this also includes oil or hazardous materials that are cargo, fuel, or a part or fluid in the transporting vessel, vehicle, aircraft, or railcar.

(9) "Hazardous material" means one of the following:

(a) Hazardous waste as defined in ORS 466.005.

(b) Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy Facility Siting Council under ORS 469.605 and radioactive substances as defined in ORS 453.005.

(c) Communicable disease agents as regulated by the Health Division under ORS chapter 431 and ORS 433.010 to 433.045 and 433.106 to 433.990.

(d) Hazardous substances designated by the United States Environmental Protection Agency under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(e) Substances listed by the United States Environmental Protection Agency in 40 Code of Federal Regulations Part 302 - Table 302.4 (List of Hazardous Substances and Reportable Quantities) and amendments.

(f) Material regulated as a Chemical Agent under ORS 465.550.

(g) Material used as a weapon of mass destruction, or biological weapon.

(h) Pesticide residue.

(i) Dry cleaning solvent as defined by ORS 465.200(9).

(10) "Immediately" in relation to a response to a spill means that the actions necessary to protect human health and the environment take priority over all other concerns of the responsible person.

(11) "Incident Commander" means the individual under the National Incident Management System (NIMS) Incident Command System that is responsible for the overall management and control of responding entities. The first emergency responder to arrive at the scene becomes the incident commander until relieved, or the incident is over. The Department is the Lead Agency of the State of Oregon during the cleanup phase of oil and hazardous material incidents, and relieves the Incident Commander when the life safety portion of the emergency response is complete and the focus of the effort is on containment and cleanup of oil or hazardous materials.

(12) "Initial assessment" includes, but is not limited to, the following tasks:

(a) Verifying the spill location;

(b) Establishing of the type of incident based on products and conditions;

(c) Confirming or correcting the reported quantity released or areal extent of the contamination;

(d) Reporting the efficacy of the initial containment;

(e) Projecting immediate resource needs to control the release;

(f) Reporting local knowledge about the probable impacts of the release;

(g) Providing the Department with information necessary to the Department's preliminary risk evaluation for the incident and characterizing of the release; and



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(h) Other tasks as necessary to collect ephemeral data and information ascertainable only at the time of the release.

(13) "Lead Agency" means the designated representative authority of either the state or federal government. The Department is the Lead Agency of the State of Oregon for oil and hazardous materials incidents. The Environmental Protection Agency and the United States Coast Guard are the Lead agencies of the federal government for oil and hazardous materials incidents. The Lead Agency appoints the State or Federal On-Scene Coordinator.

(14) "Non-petroleum oils" includes synthetic lubricants, edible oil, vegetable oils, and animal oils.

(15) "Oils" or "Oil" includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product.

(16) "Person" includes, but is not limited to, an individual, trust, firm, joint stock company, corporation, partnership, association, municipal corporation, political subdivision, interstate body, the state and any agency or commission thereof and the federal government and any agency thereof.

(17) "Pesticide" has the meaning given in ORS 634.006.

(18) "Pesticide Residue" means a hazardous waste that is generated from pesticide operations and pesticide management, such as, from pesticide use (except household use), manufacturing, repackaging, formulation, bulking and mixing, and spills. Pesticide residue includes, but is not limited to, unused commercial pesticides, tank or container bottoms or sludges, pesticide spray mixture, container rinsings and pesticide equipment washings, and substances generated from pesticide treatment, recycling, disposal, and rinsing spray and pesticide equipment. Pesticide residue does not include pesticide-containing materials that are used according to label instructions, and substances such as, but not limited to treated soil, treated wood, food-stuff, water, vegetation, and treated seeds where pesticides were applied according to label instructions.

(19) "Plan" as used in this Division, means any spill prevention, contingency, or emergency response document prepared in compliance with the requirements of a federal, state, or local government authority.

(20) "Reportable quantity" is an amount of oil or hazardous material which if spilled or released, or threatens to spill or release, in quantities equal to or greater than those specified in OAR 340-142-0050 must be reported pursuant to OAR 340-142-0040

(21) "Respond" or "response" means:

(a) Actions taken to monitor, assess and evaluate a spill or release or threatened spill or release of oil or hazardous material;

(b) First aid, rescue or medical services, and fire suppression; or

(c) Containment or other actions appropriate to prevent, minimize or mitigate damage to the public health, safety, welfare or the environment which may result from a spill or release or threatened spill or release if action is not taken.

(22) "Responsible Person" means any person owning or having control over any oil or hazardous material spilled or released or threatening to spill or release.

(23) "SOSC" means State On-Scene Coordinator, the state official appointed by the Department when serving as the lead agency to represent the interests of the Department and the State of Oregon in response to an oil or hazardous material spill or release or threatened spill or release. The SOSC coordinates the interests of other state and local agencies within a unified command. Before assuming an incident command role under the National Incident Management System (NIMS) Incident Command System, the SOSC may provide technical advice to police, fire and other first responders, and coordinate a cleanup response with state and local agencies.

(24) "Spill or Release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of any oil or hazardous material into the air or into or on any land or waters of the state, as defined in 468B.005, except as authorized by a permit issued under ORS Chapter 454, 459, 459A, 468, 468A, 468B or 469, ORS 466.005 to 466.385, 466.990(1) and (2), 466.992 or federal law or while being stored or used for its intended purpose.

(25) "Threatened Spill or Release" means oil or hazardous material is likely to escape or be carried into the air or into or on any land or waters of the state

(26) "Unified Command" means the combined representatives of the Lead Agencies, responsible person, and others with the authority to make ultimate decisions as part of a National Incident Management System (NIMS)-style Incident Command System during an emergency response.

(27) "Waters of the State" includes lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon

and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

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

Stat. Auth.: ORS 183, 459, 466 & 468B

Stats. Implemented: ORS 466.605 & 466.630

Hist.: DEQ 3-2003, f. & cert. ef. 1-31-03; DEQ 8-2005, f. & cert. ef. 7-14-05

## 340-142-0130

### Incident Management and Emergency Operations

(1) Any person required by an approved plan or a rule, contract, permit or formal agreement to coordinate activity with the Department during an emergency involving a spill or release of oil or hazardous material must follow a protocol of organization consistent with the National Incident Management System (NIMS).

(2) Any person required by an approved plan or a rule, contract, permit or formal agreement to coordinate activity with the Department during an emergency involving a spill or release of oil or hazardous material must accept the Department as the Lead Agency of the State for cleanup at oil and hazardous materials incidents. The Department will assign a State On-Scene Coordinator (SOSC). The SOSC will represent all state agencies responding to the incident. The SOSC will be the point of contact through which the Director will delegate assignments in an emergency. The SOSC will assume the NIMS command role from any local Incident Commander when the incident requires state or federal management.

(3) Any person required to coordinate with the Department must do so regardless of whether or not the Department staff responding to the spill or other emergency is available at the site of the spill or other emergency. The Department may provide services from a remote location. Telephone communication, electronically transmitted data, facsimile transmission, or other communication with responders constitutes a presence at an incident command location or spill site and carries the full authority of the Department.

Stat. Auth.: ORS 466.625 & 468B.010

Stats. Implemented: ORS 466.610, 466.620 & 468B.395

Hist.: DEQ 3-2003, f. & cert. ef. 1-31-03; DEQ 8-2005, f. & cert. ef. 7-14-05

## 340-162-0150

### Fees

(1) Fees shall be assessed to provide revenues to operate the underground storage tank soil matrix cleanup services licensing program. Fees are assessed for the following:

(a) Underground Storage Tank Soil Matrix Cleanup Service Provider;

(b) Underground Storage Tank Soil Matrix Cleanup Supervisors License;

(c) Underground Storage Tank Soil Matrix Cleanup Examination Study Guides.

(2) Underground Storage Tank Soil Matrix Cleanup service providers shall pay a non-refundable license application fee of \$300 for a 12 month license.

(3) Individuals seeking to obtain an underground storage tank soil matrix cleanup supervisor's license shall pay a non-refundable license application fee of \$150 for a 24 month license.

(4) Examination study guides shall be made available to the public for the cost of production.

(5) Replacement licenses will be provided by the department for a fee of \$10.

Stat. Auth.: ORS 465.200 - 465.320 & 466.706 - 466.995

Stats. Implemented: ORS 466.750

Hist.: DEQ 27-1990, f. & cert. ef. 7-6-90; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 8-2005, f. & cert. ef. 7-14-05

## 340-177-0095

### Certified Reports

(1) The tank owner, or service provider on owner's behalf, must submit certified project reports and receive approval from the Department for heating oil tank services performed at underground heating oil tank sites. This applies to the following projects:

(a) Decommissioning projects where the tank owner voluntarily requests Department approval; and

(b) All underground heating oil tank cleanup projects.

(2) Service providers licensed in accordance with Chapter 340, Division 163 are eligible to submit certified reports.

(3) Certified reports submitted to the Department must be accompanied by the required filing fee of \$50 for decommissioning of a tank with no

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confirmed release and \$125 for decommissioning of a tank with a confirmed release. Filing fees are non-refundable.

(4) Certified reports must contain specific information as set forth below:

(a) For a voluntary decommissioning performed after March 15, 2000: The decommissioning report as required by OAR 340-177-0025 and decommissioning certification as required by OAR 340-163-0060.

(b) For a voluntary decommissioning performed prior to March 15, 2000:

(A) If the work was performed by a service provider licensed to perform soil matrix cleanup or UST decommissioning at the time the service was provided and two soil samples were collected in general conformity with the requirements of OAR 340-177-0025, a report that meets the general requirements of OAR 340-177-0025(3) is sufficient;

(B) If no soil samples were collected, or if the sampling work was performed by an unlicensed contractor, a licensed service provider must conduct a site assessment that meets the requirements of OAR 340-177-0025(2)(c) and must include a report that meets the requirements OAR 340-177-0025(3).

(c) For all heating oil tank cleanup projects, the cleanup certification provided in accordance with OAR 340-163-0060 must be accompanied by the specific report required by either or both OAR 340-177-0055(4) and (5) and OAR 340-177-0065(2) based on the cleanup option selected for the site.

(5) Department approval will be provided in the form of a letter to the tank owner, with a copy to the certifying service provider, that indicates the certified report has been registered and Department files on the project have been closed.

Stat. Auth.: ORS 466.706

Stats. Implemented: ORS 466.706

Hist.: DEQ 3-2000, f. & cert. ef. 2-17-00; DEQ 8-2005, f. & cert. ef. 7-14-05

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## Department of Fish and Wildlife Chapter 635

**Adm. Order No.:** DFW 55-2005

**Filed with Sec. of State:** 6-17-2005

**Certified to be Effective:** 6-17-05

**Notice Publication Date:** 5-1-05

**Rules Adopted:** 635-017-0095

**Rules Repealed:** 635-017-0095(T)

**Subject:** Permanently adopt sturgeon sport fishing season in the Willamette River.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

### 635-017-0095

#### Sturgeon Season

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) The Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of sturgeon, three days per week, Thursday, Friday, and Saturday, during the following periods:

(a) Saturday, January 1, 2005 through Saturday, July 30, 2005, and

(b) Saturday, October 1, 2005 through Friday, December 31, 2005.

(c) The retention of sturgeon is prohibited July 31, 2005 through September 30, 2005.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05

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**Adm. Order No.:** DFW 56-2005

**Filed with Sec. of State:** 6-21-2005

**Certified to be Effective:** 7-1-05

**Notice Publication Date:** 5-1-05

**Rules Adopted:** 635-004-0009, 635-039-0085

**Rules Amended:** 635-004-0005, 635-039-0080

**Subject:** Adopt new regulations and amend existing regulations to clarify that Oregon adopts, by reference, any inseason actions that may be taken by the federal government and the International Pacific

Halibut Commission for sport or commercial fisheries for Pacific halibut.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

### 635-004-0005

#### Scope of Rules

Division 004 incorporates into Oregon Administrative Rules, by reference, **Pacific Halibut Fishery Regulations of the International Pacific Halibut Commission (IPHC)**, and in addition to the extent they are consistent with these regulations, **Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996)**, as amended by Federal Regulations, Vol. 70, No. 74, dated April 19, 2005. Therefore, persons must consult the Federal Regulations in addition to Division 004 to determine all rules applicable to halibut fishing requirements. It is unlawful to take halibut for commercial purposes except as set by the IPHC and in accordance with a valid permit issued by the IPHC.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0725, Renumbered from 635-036-030; FWC 25-1989(Temp), f. & cert. ef. 4-5-89; FWC 51-1989, f. & cert. ef. 7-28-89; FWC 32-1990(Temp), f. & cert. ef. 4-4-90; FWC 67-1991, f. 6-25-91, cert. ef. 7-1-91; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 29-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05

### 635-004-0009

#### Halibut Seasons

The Pacific halibut commercial fishery in Oregon is regulated by the federal government and the **International Pacific Halibut Commission (IPHC)**. OAR chapter 635, division 004 incorporates into Oregon Administrative Rules, by reference, modifications or additions to provisions determined by the Commission and to the extent they are consistent with **Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996)**; Volume 70, Number 37, dated February 25, 2005.

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

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

Stats. Implemented: ORS 496.162, 506.129

Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05

### 635-039-0080

#### Purpose and Scope

(1) The purpose of Division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2005 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2005 Oregon Sport Fishing Regulations** in addition to Division 011 and Division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

(b) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); as amended by Federal Regulations, Vol. 70, No. 74, dated April 19, 2005.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05

### 635-039-0085

#### Halibut Seasons

The Pacific halibut sport fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR chapter 635, division 039 incorporates into Oregon Administrative Rules, by reference, modifications or additions to provisions determined by the Commission and to the extent they are consistent with **Title 50 of the**

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**Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996);** Volume 70, Number 37, dated February 25, 2005.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119, 506.129  
Stats. Implemented: ORS 496.162, 506.129  
Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05

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**Adm. Order No.:** DFW 57-2005  
**Filed with Sec. of State:** 6-21-2005  
**Certified to be Effective:** 7-1-05  
**Notice Publication Date:** 5-1-05  
**Rules Adopted:** 635-500-3885

**Subject:** Adopt rule to amend the Klamath River Basin Fish Management Plan policies and objectives for fish management in Miller Lake and Miller Creek to include Miller Lake Lamprey.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

**635-500-3885**

## **Miller Lake Lamprey Conservation Plan**

These rules are established to provide policy direction for the conservation and management of the Miller Lake Lamprey Species Management Unit. The Miller Lake Lamprey Conservation Plan Implementation Strategy guides Department staff in the implementation of management strategies.

(1) Species Management Unit and Population Description The Miller Lake Lamprey species management unit is comprised of six documented populations and one uncertain population. They are:

- (a) Mainstem Upper Williamson River above Klamath Marsh;
- (b) Miller Creek;
- (c) Jack Creek;
- (d) Sycan River above Sycan Marsh;
- (e) Long Creek;
- (f) Coyote Creek;
- (g) Shake Creek (lamprey species uncertain).

(2) Desired Status The desired status of the Miller Lake lamprey is for the species to be distributed widely throughout its historic range, with populations robust enough to withstand stochastic environmental events, and with both the populations and their habitat secure from anthropogenic threats.

(3) Management Strategies The short- and long-term management strategies for the Miller Lake Lamprey species management unit are:

- (a) Short-term Strategy Re-establish connectivity to Miller Lake.
- (b) Long-term Strategies

(A) Ensure appropriate habitat conditions and availability within the natural range of Miller Lake lamprey.

(B) Reduce entrainment or the potential for entrainment of adult and larval lampreys into water diversions.

(C) Reduce stranding or the potential for stranding of larval lampreys in dewatered segments of streams below water diversions.

(D) Maintain unobstructed opportunities, within and among populations, to allow for genetic exchange, natural dispersal or migration activities, and re-colonization of unoccupied portions of historical habitat.

(E) No hatchery fish shall be stocked in streams that support Miller Lake lamprey.

- (4) Research, Monitoring and Evaluation

(a) Research: Promote scientific studies of the Miller Lake Lamprey to aid in the conservation of the species.

(b) Monitoring: Where appropriate, incorporate lampreys into fish survey protocols in the Klamath Basin and seek to collaborate with other researchers carrying out lamprey surveys in the Basin.

(c) Evaluation: Periodically evaluate the status of Miller Lake lamprey and the success of the conservation plan management strategies.

- (5) Adaptive Management:

(a) The Klamath Watershed District Manager shall assemble a group of scientists with experience or interest in lamprey biology to serve as the Miller Lake Lamprey Technical Management Team.

(b) The Miller Lake Lamprey Technical Management Team shall meet periodically to review the success of the management actions identified in the Miller Lake Lamprey Conservation Plan and identify modifications to management actions that are needed to achieve the desired status for Miller Lake lamprey.

(6) Trigger for Plan Modification Substantial negative changes in the distribution or abundance of the Miller Lake lamprey, or the recognition of new threats to the species, shall prompt a review of the species management unit's status and all Miller Lake Lamprey Conservation Plan management

strategies by the Miller Lake Lamprey Technical Management Team. Appropriate modifications to the Miller Lake Lamprey Conservation Plan intended to better achieve the desired status identified in the Plan shall be proposed by the Miller Lake Lamprey Technical Management Team.

- (7) Reporting:

(a) The Miller Lake Lamprey Technical Management Team shall periodically report on the status of Miller Lake lamprey and the effectiveness of the management strategies identified in the Miller Lake Lamprey Conservation Plan.

(b) Annual Miller Lake Lamprey data collected and any reports on the status of Miller Lake Lamprey or evaluations of the Miller Lake Lamprey Conservation Plan shall be made available to the public.

Stat. Auth.: ORS 496.138, ORS 496.146, 506.119  
Stats. Implemented: ORS 496.162, ORS 506.109, 506.129  
Hist.: DFW 57-2005, f. 6-21-05, cert. ef. 7-1-05

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**Adm. Order No.:** DFW 58-2005(Temp)

**Filed with Sec. of State:** 6-21-2005

**Certified to be Effective:** 6-23-05 thru 12-20-05

**Notice Publication Date:**

**Rules Adopted:** 635-042-0023

**Subject:** This rule will provide a summer chinook gillnet commercial fishery in the Columbia River mainstem consistent with provisions of the US v Oregon management agreement.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

**635-042-0023**

## **Summer Salmon Season**

(1) Chinook salmon, coho salmon, sturgeon, and shad may be taken for commercial purposes in the waters of the Columbia River: Zones 1-5, as identified in OAR 635-042-0001.

- (2) During the summer salmon gill net fishery:

(a) It is unlawful to use a gill net having a mesh size less than 8 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, chinook salmon, coho salmon, sturgeon, and shad may be taken for commercial purposes by gill net during the following open periods:

- (A) 7:00 p.m., June 23, 2005 to 5:00 a.m., June 24, 2005.
- (B) 7:00 p.m., June 27, 2005 to 5:00 a.m., June 28, 2005.
- (C) 7:00 p.m., July 5, 2005 to 5:00 a.m., July 6, 2005.

(3) A maximum of eight sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) the fishery is open. The eight sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

(4) Vessels participating in the June 23-24 summer salmon season may not possess commercial shad nets as described and permitted in OAR 635-042-0110.

Stat. Auth.: ORS 496.138, 496.146, 506.119  
Stats. Implemented: ORS 496.162, 506.129, 507.030  
Hist.: DFW 58-2005(Temp), f. 6-21-05, cert. ef. 6-23-05 thru 12-20-05

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**Adm. Order No.:** DFW 59-2005(Temp)

**Filed with Sec. of State:** 6-21-2005

**Certified to be Effective:** 6-26-05 thru 10-27-05

**Notice Publication Date:**

**Rules Amended:** 635-003-0077

**Rules Suspended:** 635-003-0077(T)

**Subject:** Amend regulations to add five additional open fishing days while retaining the current landing and possession limit then close the fishery to remain within the harvest quota.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

**635-003-0077**

## **US-Canada Border to Cape Falcon**

(1) Vessels must land their fish within 24 hours of any closure. Vessels fishing north of Leadbetter Point, WA must land their fish within the area north of Leadbetter Point. Vessels fishing south of Leadbetter Point must land their fish within the area south Leadbetter Point except that Oregon permitted vessels may also land their fish in Garibaldi, Oregon. All vessels landing salmon into Oregon from any fishery between Leadbetter Point, WA and Cape Falcon, Oregon, must notify ODFW within one hour of delivery or prior to transport away from the port of landing by calling (541) 867-



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0300 extension 271. Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery.

(2) The commercial troll season, as described above in (1) is extended May 24, 2005 through May 26, 2005. For the seven day period May 20, 2005 through May 26, 2005 there is a 125 chinook landing and possession limit per vessel.

(3) The commercial troll season, as described above in (1) is closed effective 11:59 p.m., May 26, 2005.

(4) The commercial troll season, as described above in (1) is open effective 12:01 a.m., June 3, 2005 through 11:59 p.m., June 6, 2005. For the four day period there is a 60 chinook landing and possession limit per vessel.

(5) The commercial troll season, as described above in (1) is open effective 12:01 a.m., June 26, 2005 through 11:59 p.m., June 30, 2005. For the five day period there is a 30 chinook landing and possession limit per vessel.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist: DFW 6-2005, f. & cert. ef. 2-14-05; DFW 36-2005(Temp), f. & cert. ef. 5-4-05 thru 10-27-05; DFW 48-2005(Temp), f. 5-23-05, cert. ef. 5-24-05 thru 10-27-05; DFW 49-2005(Temp), f. 6-1-05, cert. ef. 6-3-05 thru 10-27-05; DFW 59-2005(Temp), f. 6-21-05, cert. ef. 6-26-05 thru 10-27-05

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**Adm. Order No.:** DFW 60-2005(Temp)

**Filed with Sec. of State:** 6-21-2005

**Certified to be Effective:** 6-24-05 thru 12-21-05

**Notice Publication Date:**

**Rules Amended:** 635-023-0095

**Rules Suspended:** 635-023-0095(T)

**Subject:** Amend sturgeon rules to implement retention closure on the mainstem Columbia River from The Dalles Dam to the John Day Dam.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-023-0095

### Sturgeon Season

(1) The 2005 Oregon Sport Fishing Regulations provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the 2005 Oregon Sport Fishing Regulations.

(2) Except as provided in subsections (3), (4) and (5) of this rule, the Columbia River is open to the retention of sturgeon all year with the following restrictions:

(a) Catch limit is one per day, five per year.

(b) There is a 42" minimum length and a 60" maximum length from the mouth upstream to The Dalles Dam.

(c) There is a 48" minimum length and a 60" maximum length from The Dalles Dam upstream to the Oregon-Washington border.

(d) All oversize, undersize, and unwanted legal size sturgeon must be released immediately unharmed into the water.

(e) Oversize sturgeon cannot be removed totally or in part from the water.

(f) Only one single-point, barbless hook may be used for sturgeon angling in the Columbia River Zone including Youngs Bay.

(g) Catch and release of sturgeon may continue after taking the daily or annual limit or when quota is reached.

(3) The Columbia River from Beacon Rock (River Mile 141) upstream to Bonneville Dam is closed to all sturgeon angling effective 11:59 p.m., April 30, 2005 through July 31, 2005.

(4) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of sturgeon, three days per week, Thursday, Friday, and Saturday, during the following periods:

(a) Saturday, January 1, 2005 through Saturday, July 30, 2005, and

(b) Saturday, October 1, 2005 through Friday, December 31, 2005.

(c) The retention of sturgeon is prohibited July 31, 2005 through September 30, 2005.

(5) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of sturgeon seven days per week during the following periods:

(a) Saturday, January 1, 2005 through Saturday, April 30, 2005, and

(b) Saturday, May 14, 2005 through Monday, July 4, 2005.

(c) The retention of sturgeon is prohibited May 1, 2005 through May 13, 2005 and from July 5, 2005 through December 31, 2005.

(6) During the fishing period as identified in section (5)(b) of this rule, only sturgeon between 45-60" in overall length may be retained.

(7) The Columbia River between Bonneville Dam and The Dalles Dam closes to the retention of sturgeon effective at 12:01 a.m. June 11, 2005.

(8) The Columbia River between The Dalles Dam and John Day Dam closes to the retention of sturgeon effective 11:59 p.m. June 24, 2005.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05

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**Adm. Order No.:** DFW 61-2005(Temp)

**Filed with Sec. of State:** 6-22-2005

**Certified to be Effective:** 6-25-05 thru 7-4-05

**Notice Publication Date:**

**Rules Amended:** 635-019-0090

**Rules Suspended:** 635-019-0090(T)

**Subject:** Amend rules to open the Imnaha River from the mouth upstream to the Summit Creek Bridge to angling for adipose fin-clipped spring chinook salmon.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-019-0090

### Inclusions and Modifications

(1) The 2005 Oregon Sport Fishing Regulations provide requirements for the Northeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2005 Oregon Sport Fishing Regulations.

(2) The Umatilla River from Highway 730 Bridge upstream to the reservation boundary located upstream from Highway 11 Bridge at Pendleton is closed to angling for spring chinook salmon effective 11:59 p.m., May 13, 2005.

(3) The Imnaha River from the mouth upstream to the Summit Creek Bridge is open to angling for adipose fin-clipped spring chinook salmon effective 12:01 a.m. Saturday, June 25, 2005 through 11:59 p.m. Monday, July 4, 2005.

(a) The bag limit is one adipose fin-clipped spring chinook salmon including jack salmon per day, two per year.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp), f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 42-2005(Temp), f. & cert. ef. 5-13-05 thru 9-1-05; DFW 61-2005(Temp), f. 6-22-05, cert. ef. 6-25-05 thru 7-4-05

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**Adm. Order No.:** DFW 62-2005(Temp)

**Filed with Sec. of State:** 6-29-2005

**Certified to be Effective:** 7-1-05 thru 7-10-05

**Notice Publication Date:**

**Rules Amended:** 635-014-0090

# ADMINISTRATIVE RULES

**Subject:** Amend rule to extend the angling season on Three Rivers.  
**Rules Coordinator:** Katie Thiel—(503) 947-6033

**635-014-0090**

## Inclusions and Modifications

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) Three Rivers, tributary of the Nestucca, from the mouth upstream to the hatchery weir deadline, is open to angling for adipose fin-clipped steelhead and adipose fin-clipped spring chinook salmon July 1, 2005 through July 10, 2005.

(3) All other specifications and restrictions as specified in the current **2005 Oregon Sport Fishing Regulations** apply.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98; FWC 4-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05

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**Adm. Order No.:** DFW 63-2005(Temp)

**Filed with Sec. of State:** 6-29-2005

**Certified to be Effective:** 6-29-05 thru 7-31-05

**Notice Publication Date:**

**Rules Amended:** 635-042-0110

**Rules Suspended:** 635-042-0110(T)

**Subject:** This rule will extend the commercial shad fishery in the Columbia River. Revision is consistent with action taken June 28, 2005 by the Columbia River Compact.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

**635-042-0110**

## Gary Island to Bonneville Dam Shad Season

(1) Shad may be taken for commercial purposes from the area of the Columbia River described in section (2) daily from 3:00 p.m. to 10:00 p.m. during the following open fishing periods:

Monday, May 23 — Friday, May 27, 2005;

Tuesday, May 31 — Friday, June 3, 2005;

Monday, June 6 — Friday, June 10, 2005;

Monday, June 13 — Friday, June 17, 2005;

Monday, June 20 — Friday, June 24, 2005;

Wednesday, June 29 — Thursday, June 30, 2005.

(2) The area of the Columbia River open to fishing is from a downstream boundary of a true north/south line through the flashing red 4-second Light "50" near the Oregon bank to an upstream boundary of a straight line from a deadline marker on the Oregon bank to a deadline marker on the Washington bank, both such deadline markers located approximately five miles downstream from Bonneville Dam.

(3) It is *unlawful* to use a gill net having a mesh size less than 5-3/8 inches or more than 6-1/4 inches with a breaking strength greater than a 10-

pound pull, or to use a gill net other than a single wall floater net, or to use a gill net having slackers, or to use a gill net of more than 150 fathoms in length or 40 meshes in depth. Rip lines are authorized spaced not closer than 20 corks apart.

(4) All salmon, steelhead, walleye and sturgeon taken in shad nets must be immediately returned unharmed to the water.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 85, f. & cert. ef. 1-28-77; FWC 116(Temp), f. & cert. ef. 6-1-77 thru 6-3-77; FWC 124(Temp), f. & cert. ef. 6-17-77 thru 10-14-77; FWC 2-1978, f. & cert. ef. 1-31-78; FWC 7-1978, f. & cert. ef. 2-21-78; FWC 27-1978(Temp), f. & cert. ef. 5-26-78 thru 9-22-78; FWC 2-1979, f. & cert. ef. 1-25-79, Renumbered from 635-035-0275; FWC 6-1980, f. & cert. ef. 1-28-80; FWC 25-1980(Temp), f. & cert. ef. 6-13-80; FWC 1-1981, f. & cert. ef. 1-19-81; FWC 18-1981(Temp), f. & cert. ef. 6-10-81; FWC 6-1982, f. & cert. ef. 1-28-82; FWC 36-1982 (Temp), f. & cert. ef. 6-11-82; FWC 2-1983, f. 1-21-83, cert. ef. 2-1-83; FWC 21-1983(Temp), f. & cert. ef. 6-10-83; FWC 4-1984, f. & cert. ef. 1-31-84; FWC 2-1985, f. & cert. ef. 1-30-85; FWC 19-1985, f. & cert. ef. 5-1-85; FWC 4-1986(Temp), f. & cert. ef. 1-28-86; FWC 16-1986 (Temp), f. & cert. ef. 5-23-86; FWC 79-1986(Temp), f. & cert. ef. 12-22-86; FWC 2-1987, f. & cert. ef. 1-23-87; FWC 23-1987(Temp), f. & cert. ef. 5-20-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 10-1991, f. 2-7-91, cert. ef. 2-8-91; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 34-1992(Temp), f. 5-19-92, cert. ef. 5-20-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; FWC 6-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 36-2000(Temp), f. 6-28-00, cert. ef. 6-28-00 thru 7-1-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 39-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 45-2005(Temp), f. 5-17-05, cert. ef. 5-23-05 thru 10-16-05; DFW 63-2005(Temp), f. & cert. ef. 6-29-05 thru 7-31-05

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**Adm. Order No.:** DFW 64-2005(Temp)

**Filed with Sec. of State:** 6-30-2005

**Certified to be Effective:** 7-1-05 thru 7-31-05

**Notice Publication Date:**

**Rules Amended:** 635-023-0128

**Rules Suspended:** 635-023-0128(T)

**Subject:** Adoption of this rule will expand the recreational fishing opportunity to include retention of non-adipose fin-clipped chinook salmon, in addition to, adipose fin-clipped chinook salmon, and adipose fin-clipped steelhead from the Tongue Point/Rocky Point line upstream to the Oregon/Washington border above McNary Dam. Revision is consistent with the action taken June 28, 2005 by the Columbia River Compact.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

**635-023-0128**

## Summer Sport Fishery

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) The Columbia River is open from 12:01 a.m. June 16, 2005 through June 30, 2005 from the Tongue Point/Rocky Point line upstream to the Oregon/Washington border above McNary Dam with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per permanent regulations.

(3) Effective July 1, 2005, the mainstem Columbia River from the Tongue Point/Rocky Point line upstream to the Oregon/Washington border above McNary Dam is open with the following restrictions:

(a) Adipose fin-clipped and non-adipose fin-clipped chinook salmon may be retained.

(b) Adipose fin-clipped steelhead may be retained. All non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult salmon or adipose fin-clipped steelhead and five jacks, per permanent regulations, are in effect.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05

# ADMINISTRATIVE RULES

**Adm. Order No.:** DFW 65-2005(Temp)  
**Filed with Sec. of State:** 6-30-2005  
**Certified to be Effective:** 7-10-05 thru 12-31-05  
**Notice Publication Date:**  
**Rules Amended:** 635-023-0095

**Rules Suspended:** 635-023-0095(T)  
**Subject:** Amend sturgeon rules to expand the recreational fishing opportunity from the Wauna powerlines downstream to the mouth at Buoy 10, including Youngs Bay, and, in addition, to implement a closure on the mainstem Columbia River between the John Day Dam and the McNary Dam. Revision is consistent with action taken June 28, 2005 by the Columbia River Compact.  
**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-023-0095 Sturgeon Season

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) Except as provided in subsections (3), (4), (5), (7), (8) and (9) of this rule, the Columbia River is open to the retention of sturgeon all year with the following restrictions:

- (a) Catch limit is one per day, five per year.
- (b) There is a 42" minimum length and a 60" maximum length from the mouth upstream to The Dalles Dam.
- (c) There is a 48" minimum length and a 60" maximum length from The Dalles Dam upstream to the Oregon-Washington border.
- (d) All oversize, undersize, and unwanted legal size sturgeon must be released immediately unharmed into the water.
- (e) Oversize sturgeon cannot be removed totally or in part from the water.
- (f) Only one single-point, barbless hook may be used for sturgeon angling in the Columbia River Zone including Youngs Bay.
- (g) Catch and release of sturgeon may continue after taking the daily or annual limit or when quota is reached.

(3) The Columbia River from Beacon Rock (River Mile 141) upstream to Bonneville Dam is closed to all sturgeon angling effective 11:59 p.m., April 30, 2005 through July 31, 2005.

(4) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of sturgeon, three days per week, Thursday, Friday, and Saturday, during the following periods:

- (a) Saturday, January 1, 2005 through Saturday, July 30, 2005, and
  - (b) Saturday, October 1, 2005 through Friday, December 31, 2005.
- (c) The retention of sturgeon is prohibited July 31, 2005 through September 30, 2005.

(5) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of sturgeon seven days per week during the following periods:

- (a) Saturday, January 1, 2005 through Saturday, April 30, 2005, and
  - (b) Saturday, May 14, 2005 through Sunday, July 10, 2005.
- (c) Friday, July 15, 2005 through Sunday, July 17, 2005.
- (d) The retention of sturgeon is prohibited May 1, 2005 through May 13, 2005; July 11, 2005 through July 14, 2005; and from July 18, 2005 through December 31, 2005.

(6) During the fishing period as identified in section (5)(b) and 5(c) of this rule, only sturgeon between 45 – 60" in overall length may be retained.

(7) The Columbia River between Bonneville Dam and The Dalles Dam closes to the retention of sturgeon effective at 12:01 a.m. June 11, 2005.

(8) The Columbia River between The Dalles Dam and John Day Dam closes to the retention of sturgeon effective 11:59 p.m. June 24, 2005.

(9) The Columbia River between the John Day Dam and the McNary Dam is closed to the retention of sturgeon effective 11:59 p.m., July 10, 2005.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: ORS 496.162 & 506.129  
Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05

**Adm. Order No.:** DFW 66-2005(Temp)  
**Filed with Sec. of State:** 7-1-2005  
**Certified to be Effective:** 7-1-05 thru 12-12-05  
**Notice Publication Date:**

**Rules Amended:** 635-100-0125  
**Subject:** Amend rules regarding the listing of Aleutian geese as required by House Bill 2881. House Bill 2881 removes the Aleutian Canada goose from the Oregon Threatened and Endangered Species list.  
**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-100-0125 State List of Threatened and Endangered Species

The state list of threatened and endangered species is as follows:  
[Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 496.004, 496.171, 496.172, 496.182, 496.192 & 498.026  
Stats. Implemented: ORS 496.004, 496.171, 496.172, 496.182, 496.192 & 498.026  
Hist.: FWC 50-1988, f. & cert. ef. 6-24-88; FWC 108-1988, f. & cert. ef. 12-29-88; FWC 40-1989, f. 6-20-89, cert. ef. 7-1-89; FWC 46-1991, f. 5-1-91, cert. ef. 5-6-91; FWC 130-1991, f. & cert. ef. 11-4-91; FWC 132-1991, f. 11-19-91, cert. ef. 11-20-91; FWC 69-1993, f. & cert. ef. 11-1-93; FWC 44-1995, f. & cert. ef. 5-30-95; FWC 93-1995, f. & cert. ef. 12-8-95; Administrative Correction 3-10-98; DFW 18-1999(Temp), f. 3-12-99, cert. ef. 4-1-99 thru 9-27-99; DFW 24-1999(Temp), f. 4-14-99, cert. ef. 5-1-99 thru 10-27-99; DFW 33-1999(Temp), f. 5-7-99, cert. ef. 6-1-99 thru 11-27-99; DFW 44-1999(Temp), f. & cert. ef. 7-1-99 thru 12-27-99; DFW 49-1999(Temp), f. 7-13-99, cert. ef. 8-1-99 thru 1-27-00; DFW 51-1999, f. & cert. ef. 7-22-99; DFW 54-1999(Temp), f. 8-10-99, cert. ef. 9-1-99 thru 2-27-00; DFW 63-1999(Temp), f. 9-10-99, cert. ef. 10-1-99 thru 3-28-00; DFW 80-1999(Temp), f. 10-11-99, cert. ef. 11-1-99 thru 4-27-00; DFW 91-1999(Temp), f. 12-2-99, cert. ef. 1-1-00 thru 6-28-00; DFW 2-2000(Temp), f. & cert. ef. 2-1-00 thru 7-28-00; DFW 5-2000, f. 2-3-00, cert. ef. 2-4-00; DFW 66-2005(Temp), f. & cert. ef. 7-1-05 thru 12-12-05

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**Adm. Order No.:** DFW 67-2005(Temp)  
**Filed with Sec. of State:** 7-5-2005  
**Certified to be Effective:** 7-6-05 thru 12-31-05  
**Notice Publication Date:**  
**Rules Amended:** 635-006-0850

**Subject:** Amend rule in order to prevent landings of sardines for purposes of reduction.  
**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-006-0850 Developmental Fisheries Species List

(1) The Developmental Fisheries species, permit and gear restrictions, and landing requirements for renewal of Category A permits are as follows:  
(a) FISH:

(A) Pacific hagfish (*Eptatretus stouti*) fishery has a qualifying requirement of five landings. Annual renewal requirements are five landings of at least 1,000 pounds each or a total of 25,000 pounds. In addition, landings must be made in at least three different months. Hagfish permits are valid for 90 days from date of issue, unless five landings of at least 1,000 pounds each or a total of 25,000 pounds are made within 90 days from date of issue, in which case the permit is valid for the remainder of the year. There are 25 permits for harvest of which there are no trawl permits;

(B) Blue shark (*Prionace glauca*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 10 permits for harvest of which there are no high seas drift net permits and no large mesh gill net permits. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(C) Swordfish (*Xiphias gladius*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 5000 pounds each landing or one landing consisting of at least 5000 pounds. Permits are valid for and renewal requirements are calculated from February 1 through January 31 of the following year. There are 20 permits for harvest by floating longline and 10 permits for harvest by other gear. Specially adapted drift/gill net may be permitted. Experimental gear permits may be required. Five single-delivery permits will be issued to those who applied by annual filing date, but did not receive a Developmental Fishery Permit. Gill net gear must conform to California gear restrictions;

(D) Northern anchovy (*Engraulis mordax*) and Pacific herring (*Clupea pallasii*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 15 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;



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(E) Pacific sardine (*Sardinops sagax*) fishery has a qualifying requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. Annual renewal requirements are five landings totaling at least 80,000 pounds or landings totaling at least \$25,000, based on ex-vessel price. There are 20 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. Experimental gear permits may be required. No more than ten percent of a sardine landing may be used for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products or by-products for purposes other than human consumption or fishing bait. Exceptions to the previous limit may be granted due to unforeseen circumstances with written authorization by the ODFW Director to avoid wastage of fish. This rule incorporates, by reference, the sardine management measures for 2004 included in the Pacific Council List of Decisions for the November 2003 PFMC meeting, and in addition to the extent they are consistent with these rules, Code of Federal Regulations, Title 50 Part 660, as amended to incorporate the standards recommendations of the Pacific Council. Therefore, persons must consult the Federal Regulations in addition to this rule to determine all applicable sardine fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone. A copy of the Pacific Council decisions and the Federal Regulations may be obtained by contacting the Fish Division at (503) 947-6200;

## (b) INVERTEBRATES:

(A) Box crab (*Lopholithodes foraminatus*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 25 permits for harvest with pots only;

(B) Grooved tanner crab (*Chionoecetes tanneri*), Oregon hair crab (*Paralomis multispina*) and scarlet king crab (*Lithodes couesi*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest with pots only;

(C) Spot prawn (*Pandalus platyceros*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing or one landing consisting of at least 1000 pounds. After 2002, new permits for trawl gear will not be issued and trawl permits may be renewed as pot permits. After 2003, permits will be issued for pot gear only; no new permits will be issued until the number of permits issued is below 10, after which there may continue to be 10 permits. Permits are area specific. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head, until after the date of the lottery;

(D) Coonstripe shrimp (*Pandalus danae*) and sidestripe shrimp (*Pandalopsis dispar*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing. There are 10 permits for harvest by pot gear;

(E) Bay clams including cockle clams (*Clinocardium nuttallii*), butter clams (*Saxidomus giganteus*), gaper clams (*Tresus capax, nuttallii*), native littleneck clams (*Protothaca staminea*), and softshell clams (*Mya arenaria*) fishery has no qualifying and annual renewal requirements for intertidal hand harvest, an unlimited number of permits, and a \$25 permit fee. There are 11 permits (individual or vessel) for subtidal dive harvest, effective March 18, 1997-December 31, 1997, and 10 permits thereafter for statewide harvest and five permits for harvest south of Heceta Head. Qualifying requirements are either five landings consisting of at least 200 pounds each landing or an annual total of 2500 pounds for one calendar year during the qualifying period of January 1, 1990 through October 16, 1995. Annual renewal requirements are either five landings consisting of at least 100 pounds each landing or an annual total of 2500 pounds. An incidental catch of one gaper clam per eight butter clams, or 25 pounds of gaper clams per 100 pounds of butter clams, whichever allows the greater gaper clam incidental catch, is allowed during the closed season notwithstanding OAR 635-005-0020;

(F) Giant octopus (*Octopus dofleini*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest using octopus pots only;

(G) Marine snails (various species) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for subtidal harvest only;

(H) Flat abalone (*Haliotis walallensis*) fishery has a single permit authorized, a 3,000 pound annual quota limit, an annual renewal requirement of 10 landings of at least 20 pounds each landing, a 4-1/2 inch minimum size, year-round season, taken from nonintertidal areas with an

abalone iron, and such additional permit conditions as the Director deems appropriate as required by OAR 635-006-870 and OAR 635-006-0880.

(2) The Developmental Fisheries Species List, Category "B," is as follows:

## (a) FISH:

(A) Salmon shark (*Lamna ditropis*);

(B) Carp (*Cyprinus carpio*);

(C) Black hagfish (*Eptatretus deani*);

(D) Yellow perch (*Perca flavescens*);

(E) Eelpouts (family *Zoarcidae*);

(F) Brown bullhead (*Ameiurus nebulosus*);

(G) Skilfish (*Erilepis zonifer*);

(H) Northern squawfish (*Ptychocheilus oregonensis*);

(I) Pacific saury (*Cololabis saira*);

(J) Pacific sandfish (*Trichodon trichodon*);

(K) Eulachon (*Thaleichthys pacificus*), whitebait smelt (*Allosmerus elongatus*), night smelt (*Spirinchus starksi*), longfin smelt (*Spirinchus thaleichthys*) and surf smelt (*Hypomesus pretiosus*);

(L) Pacific pomfret (*Brama japonica*);

(M) Slender sole (*Eopsetta exilis*).

## (b) INVERTEBRATES:

(A) Pacific sand crab (*Emerita analoga*);

(B) Freshwater mussels (families Margaritifera, Anodonta, Gonidea, and Corbicula);

(C) Ocean cockle clams (*Clinocardium nuttallii*);

(D) California market squid (*Loligo opalescens*) and other squid (several species);

(E) Fragile urchin (*Allocentrotus fragilis*);

(F) Sea cucumber (*Parastichopus spp.*).

(3) The Developmental Fisheries Species List, Category "C," is as follows:

## (a) FISH:

(A) Spiny dogfish (*Squalus acanthias*);

(B) Soupfin shark (*Galeorhinus zyopterus*);

(C) Skate (family *Rajidae*);

(D) American shad (*Alosa sapidissima*);

(E) Pacific cod (*Gadus macrocephalus*);

(F) Pacific flatnose (*Antimora microlepis*);

(G) Pacific grenadier (*Coryphaenoides acrolepis*);

(H) Jack mackerel (*Trachurus symmetricus*);

(I) Chub (Pacific) mackerel (*Scomber japonicus*);

(J) Greenstriped rockfish (*Sebastes elongatus*);

(K) Redstripe rockfish (*Sebastes proriger*);

(L) Shortbelly rockfish (*Sebastes jordani*);

(M) Sharpchin rockfish (*Sebastes zacentrus*);

(N) Splitnose rockfish (*Sebastes diploproa*);

(O) Pacific sanddab (*Citharichthys sordidus*);

(P) Butter sole (*Pleuronectes isolepis*);

(Q) English sole (*Pleuronectes vetulus*);

(R) Rex sole (*Errex zechirus*);

(S) Rock sole (*Pleuronectes bilineatus*);

(T) Sand sole (*Psettichthys melanostictus*);

(U) Curlfin (lemon) sole (*Pleuronichthys decurrens*);

(V) Spotted ratfish (*Hydrolagus colliei*);

(W) Wolf-eel (*Anarrhichthys ocellatus*);

(X) Walleye pollock (*Theragra chalcogramma*).

## (b) INVERTEBRATES:

(A) Red rock crab (*Cancer productus*);

(B) Purple sea urchins (*Strongylocentrotus purpuratus*);

(C) Crayfish (*Pacifastacus leniusculus*).

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129, 506.450, 506.455, 506.460 & 506.465

Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; FWC 87-1995, f. 11-17-95, cert. ef. 11-20-95; FWC 1-1997, f. & cert. ef. 1-16-97; FWC 18-1997(Temp), f. & cert. ef. 3-18-97; FWC 34-1997, f. 6-11-97, cert. ef. 6-15-97; DFW 3-1998, f. & cert. ef. 1-12-98; DFW 17-1998(Temp), f. & cert. ef. 3-6-98 thru 7-31-98; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 85-1999, f. & cert. ef. 11-1-99; DFW 89-1999, f. & cert. ef. 11-15-99; DFW 76-2000, f. 11-21-00, cert. ef. 1-1-01; DFW 30-2001, f. & cert. ef. 5-4-01; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 117-2002, f. & cert. ef. 10-21-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 41-2003(Temp), f. & cert. ef. 5-12-03 thru 6-21-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 24-2004, f. & cert. ef. 3-23-04; DFW 121-2004, f. 12-13-04, cert. ef. 12-15-04; DFW 67-2005(Temp), f. 7-5-05, cert. ef. 7-6-05 thru 12-31-05

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**Adm. Order No.:** DFW 68-2005(Temp)

**Filed with Sec. of State:** 6-30-2005

**Certified to be Effective:** 7-1-05 thru 12-27-05

# ADMINISTRATIVE RULES

## Notice Publication Date:

**Rules Amended:** 635-004-0019

**Rules Suspended:** 635-004-0019(T)

**Subject:** Amend rule in order to adopt inseason actions that have implemented by the federal government for commercial fisheries for groundfish.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-004-0019

### Inclusions and Modifications

(1) OAR chapter 635, division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart G, West Coast Groundfish Fisheries.**

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G,** provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-01, announced inseason management changes, effective April 1, 2005, to commercial fisheries including limited entry fixed-gear sablefish tier limits, minor corrections to Rockfish Conservation Area (RCA) coordinates, and clarification of requirements when multiple gear types are on board limited entry trawl vessels.

(4) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-02, announced inseason management changes, effective May 1, 2005, to commercial fisheries including limited entry trawl trip limits and trawl gear definitions.

(5) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-03, announced inseason management changes, effective May 3, 2005, to set bycatch limits on directed open access commercial fisheries for groundfish.

(6) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-04, announced inseason management changes, effective July 1, 2005, to commercial fisheries including trip limits for limited entry trawl, limited entry fixed gear, and open access fisheries, increased bycatch limits for open access fisheries, and clarifications to trip limits for Pacific whiting.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), f. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05; DFW 68-2005(Temp), 6-30-05, cert. ef. 7-1-05 thru 12-27-05

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**Adm. Order No.:** DFW 69-2005(Temp)

**Filed with Sec. of State:** 7-1-2005

**Certified to be Effective:** 7-4-05 thru 8-31-05

**Notice Publication Date:**

**Rules Adopted:** 635-041-0074

**Subject:** Adopt rule to establish a summer commercial gillnet fishery and platform and hook-and-line, within Zone 6, for Treaty Indian fishers in the Columbia River. Implementation consistent with action taken June 30, 2005, by the Columbia River Compact.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-041-0074

### Summer Salmon Season

(1) Chinook, coho, steelhead, sockeye, walleye, carp, and shad may be taken for commercial purposes from mainstem Columbia River, Zone 6, beginning 6 a.m., Tuesday, July 5, 2005 through 6:00 p.m., Thursday, July 7, 2005.

(2) Closed areas set forth in OAR 635-041-0045, except the Spring Creek sanctuary.

(3) There are no mesh size restrictions.

(4) Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools may be kept for subsistence use. Sturgeon from the Bonneville Pool between 45-60 inches in length may be kept for subsistence use.

(5) Commercial sale of platform and hook-and-line caught fish is allowed beginning 6:00 a.m., Monday, July 4, 2005 until further notice.

(a) Gear is restricted to subsistence fishing gear; hoopnets, dipnets, rod and reel with hook-and-line.

(b) Allowable sales include chinook, coho, steelhead, sockeye, walleye, carp, and shad.

(c) Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools may be kept for subsistence use. Sturgeon from the Bonneville Pool between 45-60 inches in length may be kept for subsistence use.

(6) Sale of platform and hook-and-line caught fish from Klickitat River and Big White Salmon River is allowed beginning Monday, July 4, 2005, during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: DFW 69-2005(Temp), f. 7-1-05, cert. ef. 7-4-05 thru 8-31-05

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**Adm. Order No.:** DFW 70-2005

**Filed with Sec. of State:** 7-8-2005

**Certified to be Effective:** 7-8-05

**Notice Publication Date:** 6-1-05

**Rules Amended:** 635-004-0020, 635-004-0040

**Rules Repealed:** 635-004-0020(T), 635-004-0040(T)

**Subject:** Amended permanent rules to include inseason actions implemented by the Federal government and to clarify the definitions of selective flatfish trawl gear, small footrope trawl gear and chafing gear.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-004-0020

### Definitions

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

(1) "At-sea processing" means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another whether shoreside or on the water.

(2) "DTS complex" includes Dover sole (*Microstomus pacificus*), thornyhead (*Sebastes* spp.), and trawl-caught sablefish (blackcod, *Anoplopoma fimbria*).

(3) "Exclusive economic zone" means the zone between 3-200 nautical miles offshore of the United States.

(4) "Fishing gear" includes:

(a) "Beam trawl" means a trawl which is held open by a fixed beam frame;

(b) "Bobbin trawl" means the same as roller trawl, and is a type of bottom trawl;

(c) "Bottom trawl" means a trawl in which the otter boards or the footrope of the net contact the seabed, and includes Danish and Scottish seine gear. It also includes pair trawls fished on the bottom. Any trawl not meeting the requirements for pelagic trawls described in OAR 635-004-0040(5) is a bottom trawl;

(d) "Chafing gear" means webbing or other material attached to the codend of a trawl net to protect the codend from wear;

(e) "Codend" shall be defined as the last 50 mesh length constituting the terminal, closed end of a trawl. The meshes shall be counted forward of the pursuing tackle which terminates the codend;

(f) "Double-ply mesh" or "Double-bar mesh" means two lengths of twine tied into a single knot;

(g) "Double-walled codend" means a codend constructed of two walls of webbing;

(h) "Fixed gear" means longline, trap or pot, setnet, and stationary hook-and-line gears;

(i) "Gill net" has the meaning as set forth in OAR 635-042-0010;

(j) "Hook-and-line" means one or more hooks attached to one or more lines;

(k) "Large footrope trawl gear" is a bottom trawl net with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope).

(l) "Longline" means a stationary buoyed, and anchored groundline with hooks attached;

(m) "Mesh size" means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot regardless of twine size;

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(n) "Nontrawl gear" means all legal commercial groundfish gear other than trawl gear;

(o) "Pelagic trawl" (midwater or off-bottom) means a trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed. It includes pair trawls if fished in midwater. A pelagic trawl has no rollers or bobbins on the net;

(p) "Pot or trap" means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats;

(q) "Roller trawl" or "bobbin trawl" are identical, and mean a trawl net with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material which protects the net and footrope during fishing on the seabed. A roller trawl is a type of bottom trawl;

(r) "Seine" means any nonfixed net other than a trawl net or gill net;

(s) "Selective flatfish trawl gear" is a type of small footrope trawl gear. The selective flatfish trawl net must be a two-seamed net with no more than two riblines, excluding the codend. The breastline may not be longer than 3 ft (0.92 m) in length. There may be no floats along the center third of the headrope or attached to the top panel except on the riblines. The footrope must be shorter than 105 ft (32.26 m) in length. The headrope must be at least 30% longer in length than the footrope. An explanatory diagram of a selective flatfish trawl net is provided as Figure 1 of Part 660, Subpart G in Title 50 Code of Federal Regulations.

(t) "Set net" means a stationary, buoyed and anchored gill net or trammel net;

(u) "Single-walled codend" means a codend constructed of a single wall of webbing knitted with single or double-ply mesh;

(v) "Small footrope trawl gear" is a bottom trawl net with a footrope diameter of 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope). Other lines or ropes that run parallel to the footrope must not be augmented with material encircling or tied along their length such that they have a diameter larger than 8 inches (20 cm). For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(w) "Trammel net" means a gill net made with two or more walls joined to a common float line;

(x) "Trawl net" means a cone or funnel-shaped net which is towed or drawn through the water by one or two vessels. Trawl nets are used both on bottom and off bottom. They may be fished with or without trawl doors. They may employ warps or cables to herd fish. Trawl nets are restricted to beam trawl, bobbin or roller trawl, bottom trawl and pelagic trawl;

(y) "Trawl riblines" means heavy rope or lines that run down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing;

(z) "Troll" has the meaning as set forth in OAR 635-003-0010;

(aa) "Vertical hook and line (Portuguese longline)" means a line attached to the vessel or to a surface buoy vertically suspended to the bottom by a weight or anchor, with hooks attached between its surface and bottom end.

(5) "Groundfish" means all species of ocean food fish defined as groundfish in the **Pacific Coast Groundfish Fishery Management Plan** and in the **Federal Groundfish Regulations, Title 50, Parts 660 and 663**.

(6) "Inland waters" means all waters of the state except the Pacific Ocean.

(7) "Land, landed, or landing" means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing.

(8) "Length, total" is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length.

(9) Management lines include:

(a) "Cape Arago" means a line extending due west at 43 degrees 20 minutes 50 seconds north latitude;

(b) "Cape Blanco" means a line extending due west at 42 degrees 50 minutes 00 seconds north latitude;

(c) "Cape Falcon" means a line extending due west at 45 degrees 46 minutes 00 seconds north latitude;

(d) "Cape Lookout" means a line extending due west at 45 degrees 20 minutes 15 seconds north latitude;

(e) "Cascade Head" means a line extending due west at 45 degrees 03 minutes 50 seconds north latitude;

(f) "Heceta Head" means a line extending due west at 44 degrees 08 minutes 18 seconds north latitude;

(g) "Humbog Mountain" means a line extending due west at 42 degrees 40 minutes 30 seconds north latitude;

(h) "Mack Arch" means a line extending due west at 42 degrees 13 minutes 40 seconds north latitude.

(10) "Ocean food fish" includes all saltwater species of food fish except salmon, halibut, and shellfish whether found in fresh or salt water.

(11) "Pacific Ocean" means all water seaward of the end of the jetty or jetties of any river, bay, or tidal area, except in the Columbia River the Pacific Ocean has the definition prescribed in OAR 635-003-0005, or all water seaward of the extension of the shoreline high watermark across the river, bay, or tidal area where no jetties exist.

(12) "Rockfish" includes:

(a) Aurora rockfish, *Sebastes aurora*;

(b) Bank rockfish, *S. rufus*;

(c) Black rockfish, *S. melanops*;

(d) Black and yellow rockfish, *S. chrysomelas*;

(e) Blackgill rockfish, *S. melanostomus*;

(f) Blue rockfish, *S. mystinus*;

(g) Bocaccio, *S. paucispinis*;

(h) Bronzespotted rockfish, *S. gilli*;

(i) Brown rockfish, *S. auriculatus*;

(j) Calico rockfish, *S. dalli*;

(k) California scorpionfish, *Scorpaena quttata*;

(l) Canary rockfish, *Sebastes pinniger*;

(m) Chilipepper, *S. goodei*;

(n) China rockfish, *S. nebulosus*;

(o) Copper rockfish, *S. caurinus*;

(p) Cowcod, *S. levis*;

(q) Darkblotched rockfish, *S. crameri*;

(r) Dusty rockfish, *S. ciliatus*;

(s) Flag rockfish, *S. rubrivinctus*;

(t) Gopher rockfish, *S. carnatus*;

(u) Grass rockfish, *S. rastrelliger*;

(v) Greenblotched rockfish, *S. rosenblatti*;

(w) Greenspotted rockfish, *S. chlorostictus*;

(x) Greenstriped rockfish, *S. elongatus*;

(y) Harlequin rockfish, *S. variegatus*;

(z) Honeycomb rockfish, *S. umbrosus*;

(aa) Kelp rockfish, *S. atrovirens*;

(bb) Longspine thornyhead, *Sebastolobus altivelis*;

(cc) Mexican rockfish, *Sebastes macdonaldi*;

(dd) Olive rockfish, *S. serranoides*;

(ee) Pacific ocean perch, *S. alutus*;

(ff) Pink rockfish, *S. eos*;

(gg) Quillback rockfish, *S. maliger*;

(hh) Redbanded rockfish, *S. babcocki*;

(ii) Redstripe rockfish, *S. proriger*;

(jj) Rosethorn rockfish, *S. helvomaculatus*;

(kk) Rosy rockfish, *S. rosaceus*;

(ll) Rougheye rockfish, *S. aleutianus*;

(mm) Sharpchin rockfish, *S. zacentrus*;

(nn) Shortbelly rockfish, *S. jordani*;

(oo) Shortraker rockfish, *S. borealis*;

(pp) Shortspine thornyhead, *Sebastolobus alascanus*;

(qq) Silvergray rockfish, *Sebastes brevispinis*;

(rr) Speckled rockfish, *S. ovalis*;

(ss) Splitnose rockfish, *S. diploproa*;

(tt) Squarespot rockfish, *S. hopkinsi*;

(uu) Starry rockfish, *S. constellatus*;

(vv) Stripetail rockfish, *S. saxicola*;

(ww) Tiger rockfish, *S. nigrocinctus*;

(xx) Treefish, *S. serriceps*;

(yy) Vermilion rockfish, *S. miniatus*;

(zz) Widow rockfish, *S. entomelas*;

(aaa) Yelloweye rockfish, *S. ruberrimus*;

(bbb) Yellowmouth rockfish, *S. reedi*.

(13) "*Sebastes* complex" means all rockfish managed by the **Pacific Coast Groundfish Fishery Management Plan** except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and thornyhead (*Sebastolobus* spp.). The *Sebastes* complex includes yellowtail rockfish (*Sebastes flavidus*).

(14) "Shore-based (shoreside) processors" means any facility where fish will be processed which is fixed permanently to land.

(15) "Tender" means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish dealer.



# ADMINISTRATIVE RULES

(16) "Trip limit" means the total allowable amount of a groundfish species or species complex, by weight, or by percentage of fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip. A vessel which has landed its cumulative or daily limit may continue to fish on the limit for the next legal period as long as the fish are not landed until the next period:

(a) "Daily trip limit" means the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24-hour period;

(b) "Cumulative trip limit" means the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time, without a limit on the number of landings or trips. Cumulative trip limits apply to calendar months.

Stat. Auth.: ORS 496.138 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FWC 37, f. & ef. 1-23-76, Renumbered from 625-010-0545; FWC 49-1979, f. & ef. 11-1-79, Renumbered from 635-036-0270; FWC 10-1983, f. & ef. 3-1-83; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 17-1987(Temp), f. & ef. 5-7-87; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 28-1989(Temp), f. 4-25-89, cert. ef. 4-26-89; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 67-1991, f. 6-25-91, cert. ef. 7-1-91; FWC 21-1992(Temp), f. 4-7-92, cert. ef. 5-1-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 21-1992(Temp), f. 4-7-92, cert. ef. 5-1-92; FWC 36-1992, f. 5-26-92, cert. ef. 5-27-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 71-1996, f. 12-31-96, cert. ef. 1-1-97; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 32-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 70-2005, f. & cert. ef. 7-8-05

## 635-004-0040

### Trawl Net Restrictions

It is *unlawful* while trawling for ocean food fish to use gear not meeting the following specifications:

(1) Mesh size. Trawl nets may be used if they meet the minimum mesh sizes set forth below. The minimum sizes apply throughout the net. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (7.62 or 11.43 cm) (depending on the gear being measured) less one thickness of the metal at the widest part, can be passed with thumb pressure only through 16 of 20 sets of two meshes each of wet mesh. [Table not included. See ED. NOTE.]

(2) Chafing gear. Chafing gear may encircle no more than 50 percent of the net's circumference, except as provided in section (5) of this rule. No section of chafing gear may be longer than 50 meshes of the net to which it is attached. Chafing gear may be used only on the last 50 meshes of a small footrope trawl, measured from the terminal (closed) end of the codend. Except at the corners, the terminal end of each section of chafing gear on all trawl gear must not be connected to the net. (The terminal end is the end farthest from the mouth of the net.) Chafing gear must be attached outside any riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(3) Codends. Only single-walled codends may be used in any trawl. Double-walled codends are prohibited.

(4) Bottom, roller or bobbin trawls. A net used in a bottom, roller or bobbin trawl must have at least two continuous riblines sewn to the net and extending from the mouth of the trawl net to the terminal end of the codend, if the fishing vessel is simultaneously carrying aboard a net of less than 4.5 inch (11.43 cm) mesh size.

(5) Pelagic trawls. Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. Sweeplines, including the bottom leg of the bridle, must be bare. For at least 20 ft. (6.15m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net. A band of mesh (a "skirt") may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

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

Stat. Auth.: ORS 506.119 & 506.129

Stats. Implemented: ORS 506.119 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72, Renumbered from 625-010-0560, Renumbered from 635-036-0285; FWC 10-1983, f. & ef. 3-1-83; FWC 54-1985(Temp), f. & ef. 8-30-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 112-1990, f. 10-3-90, cert. ef. 10-5-90; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 49-1995, f. 6-7-95, cert. ef. 9-8-95; DFW 32-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 70-2005, f. & cert. ef. 7-8-05

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**Adm. Order No.:** DFW 71-2005(Temp)

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

**Certified to be Effective:** 7-7-05 thru 11-30-05

**Notice Publication Date:**

**Rules Amended:** 635-039-0080

**Rules Suspended:** 635-039-0080(T)

**Subject:** Amend rule to adopt annual regulations implemented by the federal government and the International Pacific Halibut Commission for the 2005 recreational fishery for Pacific halibut in the area between Leadbetter Point, WA and Cape Falcon, OR.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-039-0080

### Purpose and Scope

(1) The purpose of division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2005 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2005 Oregon Sport Fishing Regulations** in addition to division 011 and division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

(b) The Pacific Council Decisions document dated November 2004 (copy available from agency); and to the extent consistent with that document, Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); Federal Regulations, Vol. 70, No. 74, dated April 19, 2005; and the annual Pacific Halibut Fishery Regulations to determine regulations applicable to this fishery.

(c) Notwithstanding Title 50 of the Code of Federal Regulations, Part 300, Subpart E as amended by Federal Regulations Vol. 70, No. 74 dated April 19, 2005, effect 11:59 p.m., Sunday, June 12, 2005 the Columbia River Subarea (Cape Falcon, OR to Leadbetter Pt., WA) will close to the retention of Pacific halibut.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05

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**Adm. Order No.:** DFW 72-2005(Temp)

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

**Certified to be Effective:** 7-7-05 thru 10-27-05

**Notice Publication Date:**

**Rules Suspended:** 635-004-0005(T)

**Subject:** Regulations were adopted June 10, 2005, filed June 21, 2005, and effective July 1, 2005 clarifying and incorporating, by reference, federal regulations that effect halibut fishing requirements. This action is needed to suspend the temporary OAR effective May 1, 2005 thru October 27, 2005 which was not repealed upon permanent adoption of said rule.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-004-0005

### Scope of Rules

Division 004 incorporates into Oregon Administrative Rules, by reference, Pacific Halibut Fishery Regulations of the International Pacific Halibut Commission (IPHC), and in addition to the extent they are consistent with these regulations, **Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996), as amended by Federal Regulations, Vol. 70, No. 74, dated April 19, 2005**. Therefore, persons must consult the **Federal Regulations** and the annual **Pacific Halibut Fishery Regulations** as published by IPHC in addition to division 004 to determine all rules applicable to halibut fishing requirements. It is unlawful to take halibut for commercial purposes except as set by the IPHC and in accordance with a valid permit issued by the agency.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0725, Renumbered from 635-036-0330; FWC 25-1989(Temp), f. & cert. ef. 4-5-89; FWC 51-1989, f. & cert. ef. 7-28-89; FWC 32-1990(Temp), f. & cert. ef. 4-4-90; FWC 67-1991, f. 6-25-91, cert. ef. 7-1-91; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96;

# ADMINISTRATIVE RULES

FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 29-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05 (Suspended by DFW 72-2005(Temp), f. & cert. ef. 7-7-05 thru 10-27-05)

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**Adm. Order No.:** DFW 73-2005(Temp)

**Filed with Sec. of State:** 7-8-2005

**Certified to be Effective:** 7-11-05 thru 7-31-05

**Notice Publication Date:**

**Rules Amended:** 635-042-0023, 635-042-0145

**Rules Suspended:** 635-042-0023(T), 635-042-0145(T)

**Subject:** Amend rule to extend the summer chinook gillnet commercial fishery in the Columbia River mainstem and provide consistency in sturgeon harvest allowance in Youngs Bay. Implementation consistent with action taken July 8, 2005, by the Columbia River Compact.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-042-0023

### Summer Salmon Season

(1) Chinook salmon, coho salmon, sturgeon, and shad may be taken for commercial purposes in the waters of the Columbia River: Zones 1–5, as identified in OAR 635-042-0001.

(2) Gear is restricted to gill nets with an 8-inch minimum mesh size and a 9-3/4-inch maximum mesh size.

(a) Use of monofilament nets is allowed.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(3) The open fishing periods are:

(a) 7:00 p.m., June 23, 2005 to 5:00 a.m., June 24, 2005.

(b) 7:00 p.m., June 27, 2005 to 5:00 a.m., June 28, 2005.

(c) 7:00 p.m., July 5, 2005 to 5:00 a.m., July 6, 2005.

(d) 7:00 p.m., July 11, 2005 to 5:00 a.m., July 12, 2005.

(4) A maximum of eight sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) the fishery is open. The eight sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: DFW 58-2005(Temp), f. 6-21-05, cert. ef. 6-23-05 thru 12-20-05; DFW 73-2005(Temp), f. 7-8-05, cert. ef. 7-11-05 thru 7-31-05

## 635-042-0145

### Youngs Bay Salmon Season

Salmon, sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(1) In the fishing period of May 5, salmon, sturgeon, and shad may be taken for commercial purposes only in those waters of Youngs Bay extending upstream of the old Youngs Bay bridge (alternate Highway 101) to the upper boundary at the confluence of the Youngs and Klaskanine rivers.

(2) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (a), the spring fishery, paragraph (b), and summer fishery, paragraph (c), as follows:

(a) Winter Season:

6:00 p.m. February 16, 2005–6:00 a.m. February 17, 2005;

6:00 p.m. February 19, 2005–12 Noon February 20, 2005;

6:00 p.m. February 23, 2005–6:00 a.m. February 24, 2005;

6:00 p.m. February 26, 2005–12 Noon February 27, 2005;

6:00 p.m. March 2, 2005–6:00 a.m. March 3, 2005;

6:00 p.m. March 5, 2005–12 Noon March 6, 2005;

6:00 p.m. March 9, 2005–6:00 a.m. March 10, 2005;

6:00 p.m. March 12, 2005–12 Noon March 13, 2005;

6:00 p.m. March 16, 2005–6:00 a.m. March 17, 2005.

(b) Spring Season:

4:00 p.m. May 5, 2005–8:00 p.m. May 5, 2005;

8:00 p.m. May 10, 2005–12 Midnight May 10, 2005;

8:00 p.m. May 12, 2005–2:00 a.m. May 13, 2005;

6:00 p.m. May 16, 2005–6:00 a.m. May 17, 2005;

12 Noon May 23, 2005–12 Noon May 27, 2005;

12 Noon May 30, 2005–12 Noon June 3, 2005;

12 Noon June 6, 2005–12 Noon June 10, 2005;

12 Noon June 14, 2005–12 Noon June 17, 2005.

(c) Summer Season:

12 Noon June 22, 2005–12 Noon June 24, 2005;

12 Noon June 29, 2005–12 Noon July 1, 2005;

12 Noon July 6, 2005–6:00 p.m. July 7, 2005;

12 Noon July 13, 2005–6:00 p.m. July 14, 2005;

12 Noon July 20, 2005–6:00 p.m. July 21, 2005;

12 Noon July 27, 2005–6:00 p.m. July 28, 2005.

(3) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. Monofilament gillnets are allowed. It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter season from February 16, 2005 to March 17, 2005. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches during the spring and summer seasons from April 21, 2005 to July 28, 2005.

(4) A maximum of eight sturgeon may be possessed or sold by each participating vessel during the fisheries as described in (2)(c). The eight sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992(Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. 5-17-05, cert. ef. 5-18-05 thru 10-16-05; DFW 73-2005(Temp), f. 7-8-05, cert. ef. 7-11-05 thru 7-31-05

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**Adm. Order No.:** DFW 74-2005(Temp)

**Filed with Sec. of State:** 7-8-2005

**Certified to be Effective:** 7-8-05 thru 8-31-05

**Notice Publication Date:**

**Rules Amended:** 635-041-0074

**Rules Suspended:** 635-041-0074(T)

**Subject:** Adopt rule to extend the summer commercial gillnet fishery and platform and hook-and-line, within Zone 6, for Treaty Indian fishers in the Columbia River. Implementation consistent with action taken July 8, 2005, by the Columbia River Compact.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-041-0074

### Summer Salmon Season

(1) Chinook, coho, steelhead, sockeye, walleye, carp, and shad may be taken for commercial purposes from mainstem Columbia River, Zone 6, beginning 6 a.m., Tuesday, July 5, 2005 through 6:00 p.m., Thursday, July 7, 2005; 6:00 a.m., Monday, July 11, 2005 through 6:00 p.m., Thursday, July 14, 2005; 6:00 a.m., Monday, July 18, 2005 through 6:00 p.m., Friday, July 22, 2005.

(2) Closed areas set forth in OAR 635-041-0045, except the Spring Creek sanctuary.

(3) There are no mesh size restrictions.

(4) Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools may be kept for sub-

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sistence use. Sturgeon from the Bonneville Pool between 45–60 inches in length may be kept for subsistence use.

(5) Commercial sale of platform and hook-and-line caught fish is allowed beginning 6:00 a.m., Monday, July 4, 2005 until further notice.

(a) Gear is restricted to subsistence fishing gear; hoopnets, dipnets, rod and reel with hook-and-line.

(b) Allowable sales include chinook, coho, steelhead, sockeye, wall-eye, carp, and shad.

(c) Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools may be kept for subsistence use. Sturgeon from the Bonneville Pool between 45–60 inches in length may be kept for subsistence use.

(6) Sale of platform and hook-and-line caught fish from Klickitat River and Big White Salmon River is allowed beginning Monday, July 4, 2005, during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: DFW 69-2005(Temp), f. 7-1-05, cert. ef. 7-4-05 thru 8-31-05; DFW 74-2005(Temp), f. & cert. ef. 7-8-05 thru 8-31-05

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**Adm. Order No.:** DFW 75-2005(Temp)

**Filed with Sec. of State:** 7-13-2005

**Certified to be Effective:** 7-16-05 thru 12-31-05

**Notice Publication Date:**

**Rules Amended:** 635-039-0090

**Rules Suspended:** 635-039-0090(T)

**Subject:** Amend rule to reduce the catch limit on rockfish, greenling, flounder, sole, cabezon and other marine fish species not listed in the 2005 Sport Fishing Regulations in the Marine Zone.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

**635-039-0090**

**Inclusions and Modifications**

(1) The 2005 Oregon Sport Fishing Regulations provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2005 Oregon Sport Fishing Regulations.

(2) For the purposes of this rule, a “harvest target” is defined as the Oregon share of the regional recreational harvest guideline for yelloweye rockfish, canary rockfish or lingcod that may be harvested by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2005 are specified in the Pacific Council News, and to the extent they are consistent with these rules, in Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996, as amended to incorporate the standards in the Pacific Council News).

(b) Harvest targets for yelloweye rockfish, canary rockfish and lingcod effective at the start of the Oregon sport fishery in 2005 are:

(A) Yelloweye rockfish, 3.2 metric tons.

(B) Canary rockfish, 6.8 metric tons.

(C) Lingcod, 151 metric tons.

(c) Harvest targets for yelloweye rockfish, canary rockfish and lingcod may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) Regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) Inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3) For the purposes of this rule, the Oregon recreational harvest guideline for widow rockfish is 2.4 metric tons.

(4) For the purposes of this rule a “harvest cap” is defined as the total catch for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2005 the sport harvest caps are:

(a) Black rockfish and blue rockfish combined of 372.5 metric tons, of which no more than 332 metric tons may be black rockfish.

(b) Other nearshore rockfish, 11.4 metric tons.

(c) Cabezon, 15.8 metric tons.

(d) Greenling, 5.2 metric tons.

(5) In addition to the regulations for Marine Fish in the 2005 Oregon Sport Fishing Regulations, the following apply for the sport fishery in the Marine Zone in 2005:

(a) Lingcod (including green colored lingcod): 2 fish daily catch limit.

(b) Rockfish (“sea bass,” “snapper”), greenling (“sea trout”), flounder (excluding Pacific halibut), sole, cabezon and other marine fish species not listed in the 2005 Sport Fishing Regulations in the Marine Zone, located under the category of Species Name, Marine Fish: 5 fish daily catch limit in aggregate (total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) When allowed by federal groundfish regulations, retention of all marine fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species, is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut in the central coast fishery between Cape Falcon and Humbug Mountain. Persons must also consult the Pacific Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as published by IPHC to determine all rules applicable to the taking of halibut.

(d) When allowed by federal groundfish regulations, landing of all marine fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species, is prohibited when Pacific halibut is retained on the vessel during open days for the Columbia River sport fishery for Pacific halibut north of Cape Falcon. Persons must also consult the Pacific Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as published by IPHC to determine all rules applicable to the taking of halibut.

(e) Harvest methods and other specifications for marine fish in subsections (5) (a) and (b) including the following:

(A) Minimum length for lingcod, 24 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (5) (a) and (b) are open January 1 through December 31, 24 hours per day, except that ocean waters are closed for these species during June 1 through September 30, outside of the 40-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 391 subsection (h).

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05

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**Adm. Order No.:** DFW 76-2005(Temp)

**Filed with Sec. of State:** 7-14-2005

**Certified to be Effective:** 7-18-05 thru 12-31-05

**Notice Publication Date:**

**Rules Amended:** 635-023-0095

**Rules Suspended:** 635-023-0095(T)

**Subject:** Amend sturgeon rules to expand the recreational fishing opportunity from the Wauna powerlines downstream to the mouth at Buoy 10, including Youngs Bay. Revision is consistent with action taken July 13, 2005 by the Columbia River Compact.

**Rules Coordinator:** Katie Thiel—(503) 947-6033



# ADMINISTRATIVE RULES

## 635-023-0095

### Sturgeon Season

(1) The 2005 Oregon Sport Fishing Regulations provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the 2005 Oregon Sport Fishing Regulations.

(2) Except as provided in subsections (3), (4), (5), (7), (8), (9) and (10) of this rule, the Columbia River is open to the retention of sturgeon all year with the following restrictions:

(a) Catch limit is one per day, five per year.

(b) There is a 42" minimum length and a 60" maximum length from the mouth upstream to The Dalles Dam.

(c) There is a 48" minimum length and a 60" maximum length from The Dalles Dam upstream to the Oregon-Washington border.

(d) All oversize, undersize, and unwanted legal size sturgeon must be released immediately unharmed into the water.

(e) Oversize sturgeon cannot be removed totally or in part from the water.

(f) Only one single-point, barbless hook may be used for sturgeon angling in the Columbia River Zone including Youngs Bay.

(g) Catch and release of sturgeon may continue after taking the daily or annual limit or when quota is reached.

(3) The Columbia River from Beacon Rock (River Mile 141) upstream to Bonneville Dam is closed to all sturgeon angling effective 11:59 p.m., April 30, 2005 through July 31, 2005.

(4) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of sturgeon, three days per week, Thursday, Friday, and Saturday, during the following periods:

(a) Saturday, January 1, 2005 through Saturday, July 30, 2005; and

(b) Saturday, October 1, 2005 through Friday, December 31, 2005.

(c) The retention of sturgeon is prohibited July 31, 2005 through September 30, 2005.

(5) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of sturgeon seven days per week during the following periods:

(a) Saturday, January 1, 2005 through Saturday, April 30, 2005.

(b) Saturday, May 14, 2005 through Sunday, July 10, 2005.

(c) Friday, July 15, 2005 through Monday, August 15, 2005.

(6) During the fishing period as identified in section (5)(b) and 5(c) of this rule, only sturgeon between 45–60" in overall length may be retained.

(7) In the area identified in section (5), the retention of sturgeon is prohibited May 1, 2005 through May 13, 2005; July 11, 2005 through July 14, 2005; and from August 16, 2005 through December 31, 2005.

(8) The Columbia River between Bonneville Dam and The Dalles Dam closes to the retention of sturgeon effective at 12:01 a.m. June 11, 2005.

(9) The Columbia River between The Dalles Dam and John Day Dam closes to the retention of sturgeon effective 11:59 p.m. June 24, 2005.

(10) The Columbia River between the John Day Dam and the McNary Dam is closed to the retention of sturgeon effective 11:59 p.m., July 10, 2005.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05

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**Adm. Order No.:** DFW 77-2005(Temp)

**Filed with Sec. of State:** 7-14-2005

**Certified to be Effective:** 7-18-05 thru 7-31-05

**Notice Publication Date:**

**Rules Amended:** 635-042-0023, 635-042-0145

**Rules Suspended:** 635-042-0023(T), 635-042-0145(T)

**Subject:** Amend rule to extend the summer chinook gillnet commercial fishery in the Columbia River mainstem and provide consistency in sturgeon harvest allowance in Youngs Bay. Implementation consistent with action taken July 13, 2005, by the Columbia River Compact.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-042-0023

### Summer Salmon Season

(1) Chinook salmon, coho salmon, sturgeon, and shad may be taken for commercial purposes in the waters of the Columbia River: Zones 1–5, as identified in OAR 635-042-0001.

(2) Gear is restricted to gill nets with an 8-inch minimum mesh size and a 9-3/4-inch maximum mesh size.

(a) Use of monofilament nets is allowed.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(3) The open fishing periods are:

(a) 7:00 p.m., June 23, 2005 to 5:00 a.m., June 24, 2005.

(b) 7:00 p.m., June 27, 2005 to 5:00 a.m., June 28, 2005.

(c) 7:00 p.m., July 5, 2005 to 5:00 a.m., July 6, 2005.

(d) 7:00 p.m., July 11, 2005 to 5:00 a.m., July 12, 2005.

(e) 7:00 p.m., July 18, 2005 to 5:00 a.m., July 19, 2005.

(4) A maximum of three sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) the fishery is open. The three sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: DFW 58-2005(Temp), f. 6-21-05, cert. ef. 6-23-05 thru 12-20-05; DFW 73-2005(Temp), f. 7-8-05, cert. ef. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 7-31-05

## 635-042-0145

### Youngs Bay Salmon Season

(1) Salmon, sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(a) In the fishing period of May 5, salmon, sturgeon, and shad may be taken for commercial purposes only in those waters of Youngs Bay extending upstream of the old Youngs Bay bridge (alternate Highway 101) to the upper boundary at the confluence of the Youngs and Klaskanine rivers.

(b) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (A), the spring fishery, paragraph (B), and summer fishery, paragraph (C), as follows:

(A) Winter Season:

6:00 p.m. February 16, 2005–6:00 a.m. February 17, 2005;

6:00 p.m. February 19, 2005–12 Noon February 20, 2005;

6:00 p.m. February 23, 2005–6:00 a.m. February 24, 2005;

6:00 p.m. February 26, 2005–12 Noon February 27, 2005;

6:00 p.m. March 2, 2005–6:00 a.m. March 3, 2005;

6:00 p.m. March 5, 2005–12 Noon March 6, 2005;

6:00 p.m. March 9, 2005–6:00 a.m. March 10, 2005;

6:00 p.m. March 12, 2005–12 Noon March 13, 2005;

6:00 p.m. March 16, 2005–6:00 a.m. March 17, 2005.

(B) Spring Season:

4:00 p.m. May 5, 2005–8:00 p.m. May 5, 2005;

8:00 p.m. May 10, 2005–12 Midnight May 10, 2005;

8:00 p.m. May 12, 2005–2:00 a.m. May 13, 2005;

6:00 p.m. May 16, 2005–6:00 a.m. May 17, 2005;

12 Noon May 23, 2005–12 Noon May 27, 2005;

12 Noon May 30, 2005–12 Noon June 3, 2005;

12 Noon June 6, 2005–12 Noon June 10, 2005;

12 Noon June 14, 2005–12 Noon June 17, 2005.

(C) Summer Season:

12 Noon June 22, 2005–12 Noon June 24, 2005;

12 Noon June 29, 2005–12 Noon July 1, 2005;

12 Noon July 6, 2005–6:00 p.m. July 7, 2005;

12 Noon July 13, 2005–6:00 p.m. July 14, 2005;

12 Noon July 20, 2005–6:00 p.m. July 21, 2005;

12 Noon July 27, 2005–6:00 p.m. July 28, 2005.

(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 sturgeon may be possessed or sold by each participating vessel during the fisheries as described in (1)(b)(C). The three sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: 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-

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1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. 5-17-05, cert. ef. 5-18-05 thru 10-16-05; DFW 73-2005(Temp), f. 7-8-05, cert. ef. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 7-31-05

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**Department of Forestry**  
**Chapter 629**

**Adm. Order No.:** DOF 5-2005(Temp)  
**Filed with Sec. of State:** 6-22-2005  
**Certified to be Effective:** 7-1-05 thru 12-27-05  
**Notice Publication Date:**  
**Rules Adopted:** 629-001-0056

**Subject:** The proposed rule provides the State Forester with the authority to deny written demands for relief under Measure 37. The rule specifies that if the State Forester determines a claimant is entitled to relief, the final decision on the claim, including the form of relief, will be made by the Board of Forestry.  
**Rules Coordinator:** Gayle Birch—(503) 945-7210

**629-001-0056**  
**Delegation of Authority to State Forester — Responding to Claims under Chapter 1, Oregon Laws 2005**

(1) This rule delegates to the State Forester certain duties and responsibilities to carry out the authorities of the Board of Forestry and the Department in responding to claims under Chapter 1, Oregon Laws 2005 (2004 Ballot Measure 37). This rule further provides for review and modification by the Board of Forestry of certain actions taken by the State Forester pursuant to this delegation of authority.

(2) The State Forester is vested by the Board of Forestry with authority to respond to claims under Chapter 1, Oregon Laws 2005 by:

- (a) Reviewing claims;
- (b) Denying claims;
- (c) Recommending approval of claims by modifying, removing, or not applying the statute(s) or rule(s) that are the basis of the claim; or
- (d) Recommending payment of claims. These actions shall be done in compliance with Department of Administrative Services administrative rules relating to Chapter 1, Oregon Laws 2005.

(3) The State Forester shall submit to the Board any recommendation made under paragraph (2)(c) or (d) of this rule. The Board may accept or modify the State Forester's recommendation.

(4) The State Forester shall establish procedures to provide notice of any action on a claim under Chapter 1, Oregon Laws 2005 as required by Department of Administrative Services administrative rules relating to Chapter 1, Oregon Laws 2005.

(5) Actions by the Board of Forestry or State Forester on claims under this rule are actions under Chapter 1, Oregon Laws 2005, and are not orders under ORS 527.700.

Stat. Auth.: 2005 OL ch. 1 (2004 Oregon Ballot Measure 37), ORS 526, 527  
Stats. Implemented: 2005 OL ch.1 (2004 Oregon Ballot Measure 37), ORS 526.016, 526.031, 526.041  
Hist.: DOF 5-2005(Temp), f. 6-22-05, cert. ef. 7-1-05 thru 12-27-05

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

**Adm. Order No.:** OMAP 31-2005  
**Filed with Sec. of State:** 6-20-2005  
**Certified to be Effective:** 7-1-05  
**Notice Publication Date:** 6-1-05  
**Rules Amended:** 410-125-1070

**Subject:** The Hospital Services Administrative rules govern Office of Medical Assistance Programs' (OMAP) payments for services rendered to clients. OMAP permanently amended OAR 410-125-1070 to clarify intent of responsibility of Type A and Type B hospitals to adhere to time lines for requested information and to add guidelines around discretionary sanctions or fines for failure to supply requested information, timely.  
**Rules Coordinator:** Darlene Nelson—(503) 945-6927

**410-125-1070**  
**Type A and Type B Hospitals**

(1) Type A and Type B hospitals must submit the following information to the Office of Medical Assistance Programs (OMAP):

(a) The aggregate percent increase in patient charges and the effective date of the increase within 30 days following the end of their fiscal year for increases in the preceding year. Aggregate percent increase in patient charges is defined as the percent increase in patient revenues due to charge increases; and

(b) The amount of payment received by the hospital, from each OMAP contracted managed care plan and third-party payers, for inpatient and outpatient hospital services provided to managed care members, within the hospital's fiscal year.

(2) When a hospital is contracted with a Managed Care Organization (MCO), within thirty (30) days of OMAP's request the hospital will supply OMAP the following information:

- (a) The name of the contracting MCO; and
- (b) The dates for which the contract will be effective; and
- (c) The contracted services and reimbursement rates.

(3) The hospital and MCO must coordinate payment information to verify and return the MCO payment data file sent by OMAP within ninety (90) days from date the data file is received by the hospital.

(4) Failure to supply the requested information within timelines stated may result in a discretionary sanction or fine (see OAR 410-120-1440). No sanction or fine will be imposed if OMAP determines, at its sole discretion, that the hospital was unable to coordinate payment information with the MCO through no fault of the hospital's own.

Stat. Auth.: ORS 409  
Stats. Implemented: ORS 414.065  
Hist.: OMAP 12-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 31-2005, f. 6-20-05, cert. ef. 7-1-05

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**Adm. Order No.:** OMAP 32-2005  
**Filed with Sec. of State:** 6-21-2005  
**Certified to be Effective:** 7-1-05  
**Notice Publication Date:** 6-1-05  
**Rules Amended:** 410-121-0030

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

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

# ADMINISTRATIVE RULES

## 410-121-0030

### Practitioner-Managed Prescription Drug Plan (PMPDP)

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that fee for service clients of the Oregon Health Plan will have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer-reviewed research), make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race or ethnicity.

(2) PMPDP Plan Drug List (PDL):

(a) The PDL is the primary tool that the Department of Human Services (DHS) has developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL consists of prescription drugs in selected classes that DHS, in consultation with the Health Resources Commission (HRC), has determined represent effective drug(s) available at the best possible price;

(c) For each selected drug class, the PDL will identify a drug(s) as the benchmark drug that DHS determines to be the most effective drug(s) available for the best possible price;

(d) The PDL will include other drugs in the class that are Medicaid reimbursable and which the Food and Drug Administration (FDA) has determined to be safe and effective if the relative cost is less than the benchmark drug(s). If pharmaceutical manufacturers enter into supplemental discount agreements with DHS that reduce the cost of their drug below that of the benchmark drug for the class, DHS will include their drug in the PDL;

(e) A copy of the current PDL is available on the web at [www.dhs.state.or.us/policy/healthplan/guides/pharmacy/](http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/).

(3) PMPDP PDL Selection Process:

(a) DHS will utilize the recommendations made by the HRC, which result from an evidence-based evaluation process, as the basis for identifying the most effective drug(s) within a selected drug class;

(b) DHS will determine the drug(s) identified in (3)(a) that is (are) available for the best possible price and will consider any input from the HRC about other FDA-approved drug(s) in the same class that are available for a lesser relative price. DHS will determine relative price using the methodology described in subsection (4);

(c) DHS will review drug classes and selected drug(s) for the drug classes periodically:

(A) Review will occur more frequently at the discretion of DHS if new safety information or the release of new drugs in a class or other information makes a review advisable;

(B) DHS will not add new drugs to the PDL until they have been reviewed by the HRC;

(C) DHS will make all changes or revisions to the PDL, using the rulemaking process and will publish the changes on DHS's Pharmaceutical Services provider rules Web page.

(4) Relative cost and best possible price determination:

(a) DHS will determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) DHS may also consider dosing issues, patterns of use and compliance issues. DHS will weigh these factors with any advice provided by the HRC in reaching a final decision;

(c) DHS will determine the benchmark drug based on (4)(b) and on the Estimated Acquisition Cost (EAC) on the first of the month (OAR 410-121-0155) in which DHS reviews that specific drug class;

(d) Once the cost of the benchmark drug is determined, DHS will recalculate the cost of the other FDA-approved drugs in the class using the EAC in effect for retail pharmacies on the first of the month in which DHS reviews that specific drug class less average available rebate. DHS will include drugs with prices under the benchmark drug cost on the PDL.

(5) Regardless of the PDL, pharmacy providers shall dispense prescriptions in the generic form, unless the practitioner requests otherwise, subject to the regulations outlined in OAR 410-121-0155. Table 121-0030-1, PMPDP PDL (updated effective 07/01/05)

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04;

OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 32-2005, f. 6-21-05, cert. ef. 7-1-05

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**Adm. Order No.:** OMAP 33-2005

**Filed with Sec. of State:** 6-21-2005

**Certified to be Effective:** 7-1-05

**Notice Publication Date:** 6-1-05

**Rules Amended:** 410-120-1295

**Rules Repealed:** 410-120-1295(T)

**Subject:** The General Rules Program administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. OMAP permanently amended OAR 410-120-1295 to reference the reimbursement documents: FCHP Non-Contracted DRG Hospital Reimbursement Rates, effective for services rendered October 1, 2003 through September 30, 2004 and FCHP Non-Contracted DRG Hospital Reimbursement Rates, effective for services rendered October 1, 2004 through October 1, 2005. These documents are necessary to apply the formula established by the reimbursement methodology in ORS 414.743 and are referenced in rule to give correct and appropriate information to hospitals and managed care organizations when applying the formula to claims for reimbursement for services rendered to medical assistance clients.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-120-1295

### Non-Participating Provider

(1) For purposes of this rule, a provider enrolled with the Office of Medical Assistance Programs (OMAP) that does not have a contract with an OMAP-contracted managed care plan is referred to as a non-participating provider.

(2) For covered services that are subject to reimbursement from the managed care plan, a non-participating provider, other than a hospital governed by (3)(b) below, must accept from the OMAP-contracted managed care plan, as payment in full, the amount that the provider would be paid from OMAP if the client was fee-for-service.

(3) The OMAP-contracted FCHP that does not have a contract with a hospital, is required to reimburse, and hospitals are required to accept as payment in full the following reimbursement:

(a) The FCHP will reimburse a non-participating Type A and Type B Hospital fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the FCHP for the contract period (ORS 414.727).

(b) All other non-participating hospitals, not designated as a rural access or Type A and Type B hospital, for dates of service on or after October 1, 2003 reimbursement will be based upon the following:

(i) Inpatient service rates are based upon the capitation rates developed for the budget period, at the level of the statewide average unit cost, multiplied by the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(ii) Outpatient service rates are based upon the capitation rates developed for the budget period, at the level of charges, multiplied by the statewide average cost to charge ratio, the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(4) The geographic factor, and the statewide average unit costs for inpatient service rates for subsection (3)(i) and for outpatient service rates for subsection (3)(ii), are calculated by the department's contracted actuarial firm.

(a) The FCHP Non-Contracted DRG Hospital Reimbursement Rates document, dated October 1, 2003, is effective for dates of service October 1, 2003 through September 30, 2004.

(b) The FCHP Non-Contracted DRG Hospital Reimbursement Rates document, dated October 1, 2004, is effective for dates of service October 1, 2004 through September 30, 2005. These documents are posted on the department's website at [www.dhs.state.or.us/policy/healthplan/guides/hospital/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/hospital/main.html).

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.743

Hist.: OMAP 10-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 22-2004, f. & cert. ef. 3-22-04; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 75-2004(Temp), f. 9-30-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 4-2005(Temp), f. & cert. ef. 2-9-05 thru 7-1-05; OMAP 33-2005, f. 6-21-05, cert. ef. 7-1-05



# ADMINISTRATIVE RULES

**Adm. Order No.:** OMAP 34-2005  
**Filed with Sec. of State:** 7-8-2005  
**Certified to be Effective:** 7-11-05  
**Notice Publication Date:** 6-1-05  
**Rules Adopted:** 410-050-0861  
**Rules Amended:** 410-050-0860  
**Rules Repealed:** 410-050-0860(T), 410-050-0861(T)  
**Subject:** OAR 410-050-0860 is amended to set an end date of December 31, 2004.

OAR 410-050-0861 establishes a new rate set by the Department of Human Services Director for the period beginning January 1, 2005. The new rate is a reduction from 0.95% to 0.68%.

**Rules Coordinator:** Pat Bougher—(503) 945-5844

## 410-050-0860

### Director Determines Rate of Tax

- (1) The tax rate is determined by the Director.
- (2) The tax rate for the period beginning January 1, 2004 through June 30, 2004 is 0 percent. The tax rate for the period beginning July 1, 2004 through December 31, 2004 is 0.95 percent.
- (3) The Director may reduce the rate of assessment to the maximum rate allowed under federal law if the reduction is required to comply with federal law. If the rate is reduced pursuant to this section, the Director will notify the Hospitals as to the effective date of the rate reduction.
- (4) A Hospital is not guaranteed that any additional moneys paid to the Hospital in the form of payments for services will equal or exceed the amount of the assessment paid by the Hospital.

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 91-2004(Temp), f. & cert. ef. 12-3-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05; OMAP 28-2005(Temp), f. & cert. ef. 5-10-05 thru 11-5-05; OMAP 34-2005, f. 7-8-05, cert. ef. 7-11-05

## 410-050-0861

### Tax Rate

The Tax rate for the period beginning January 1, 2005 is 0.68 percent.  
Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 28-2005(Temp), f. & cert. ef. 5-10-05 thru 11-5-05; OMAP 34-2005, f. 7-8-05, cert. ef. 7-11-05

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

**Adm. Order No.:** MHD 6-2005  
**Filed with Sec. of State:** 6-24-2005  
**Certified to be Effective:** 7-1-05  
**Notice Publication Date:** 5-1-05  
**Rules Adopted:** 309-032-1240, 309-032-1245, 309-032-1250, 309-032-1255, 309-032-1260, 309-032-1265, 309-032-1270, 309-032-1275, 309-032-1280, 309-032-1285, 309-032-1290, 309-032-1295, 309-032-1300, 309-032-1305  
**Subject:** Adopts standards for continuous care coordination beyond the services that residential, day, and community mental health treatment providers are currently required to provide by adding standards for Intensive Community-Based Treatment and Support Services, as directed by the Legislature in the 2003 Legislative Budget Note included in House Bill 5030.  
**Rules Coordinator:** Christina Hartman—(503) 731-4405

## 309-032-1240

### Purpose

These rules prescribe standards and procedures for providers of intensive community-based treatment and support services within the continuum of mental health care for children with serious mental, emotional, and behavioral disorders and their families. These rules apply to any certified provider of Community Mental Health Treatment Services for Children and to any certified provider of Children's Intensive Mental Health Treatment Services who are also certified as providers of Intensive Community-Based Treatment and Support Services. Children will be referred to providers certified under these rules based on a Level of Need Determination. The planning and provision of intensive community-based treatment and support services must promote collaboration between families as equal partners with providers and community resources in determining how best to meet

the mental health needs of the child and family. These rules set standards for the provision of intensive psychiatric and mental health services and supports that are individualized, comprehensive, coordinated, child-centered, family-driven and culturally competent. The planning and provision of intensive community-based treatment and support services must ensure that the child and family are served in the most natural setting possible and disruptions to the child's school and home life are minimized. The goals of the service planning process are to build on child and family strengths in providing services that are directed toward successful home, school, and community functioning. Service planning must be flexible and responsive to the type, intensity, location, and duration of psychiatric and mental health services and supports that would benefit the child and family.

Stat. Auth.: ORS 430.640 & 743.556  
Stats. Implemented: ORS 430.630  
Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05; MHD 6-2005, f. 6-24-05, cert. ef. 7-1-05

## 309-032-1245

### Definitions

Definitions as used in these rules:

(1) "Behavior support plan" means the individualized strategies and techniques that are used by the family and providers to facilitate positive behavioral change in the child.

(2) "Behavior support policy" means the written policies and procedures adopted by the provider that describe the behavioral interventions and practices that may be used by the provider to support a child who is receiving services from the provider to manage his or her maladaptive or problem behavior.

(3) "Care coordination" means a process oriented activity that provides ongoing communication and collaboration with children and families with multiple needs. Care coordination includes: facilitating communication between the family, natural supports, community resources, and involved child-serving providers and agencies; organizing, facilitating and participating in team meetings at which strengths and needs are identified and safety planning occurs; and providing for continuity of care by creating linkages to and managing transitions between levels of care and transitions for older youth to the adult service system.

(4) "Case management" means a goal oriented activity that assists children, youth, and families. Case management includes: identifying strengths and needs; identifying, brokering and linking to community services and resources; assisting in obtaining entitlements; advocating on behalf of families; providing support and consultation to families; facilitating access to intensive services; and providing crisis planning, prevention, and intervention services.

(5) "Child" or "Children" means a person or persons under the age of 18, or for those with Medicaid eligibility under the age of 21, who receives ICTS services.

(6) "Child and family team" means those individuals who are responsible for creating, implementing, reviewing, and revising a service coordination plan. At minimum the team must be comprised of the family, care coordinator, and child when appropriate. The team should also include any involved child-serving providers and agencies and any other natural, formal, and informal supports as identified by the family.

(7) "Clinical supervision" means the documented oversight by a Clinical Supervisor of mental health treatment services provided by Qualified Mental Health Professionals, Qualified Mental Health Associates, or mental health paraprofessionals. Clinical Supervision includes evaluating the effectiveness of the mental health treatment services provided. Clinical Supervision is performed on a regular, routine basis.

(8) "Clinical Supervisor" means a Qualified Mental Health Professional with two years post-graduate clinical experience in a mental health treatment setting. The clinical supervisor, as documented by the provider, operates within the scope of his or her practice or licensure, and demonstrates the competency to oversee and evaluate the mental health treatment services provided by other Qualified Mental Health Professionals, Qualified Mental Health Associates, or mental health paraprofessionals.

(9) "Community Mental Health Program" or "CMHP" means an organization that provides all services for persons with mental or emotional disorders, drug abuse problems, developmental disabilities, and alcoholism and alcohol abuse problems, operated by, or contractually affiliated with, a local mental health authority, as provided in ORS 430.630(10) or a local public health authority as provided in ORS 431.375, and operated in a specific geographic area of the state under an omnibus contract with the Department of Human Services.

## ADMINISTRATIVE RULES

(10) "Comprehensive mental health assessment" means the written documentation by a QMHP of the child's presenting mental health problem(s) and mental status, and evaluation of the child's functioning in the following domains: emotional, cognitive, family, developmental, behavioral, social, physical health, nutritional, school or vocational, substance use, cultural, spiritual, recreational, and legal. A comprehensive mental health assessment is collected through interview with the child, family and other relevant persons; review of previous treatment records; observation; and psychological and neuropsychological testing when indicated. The comprehensive mental health assessment concludes with a completed DSM five axis diagnosis, clinical formulation, prognosis for treatment, and treatment recommendations. The comprehensive mental health assessment is used to document the need for mental health services and to develop or update the child's treatment plan.

(11) "Comprehensive mental health assessment update" means the written documentation by a QMHP of the most current information related to all domains of a Comprehensive Mental Health Assessment.

(12) "Department" means the Department of Human Services.

(13) "Discharge criteria" means the diagnostic, behavioral, and functional indicators that, when met, means that service is complete. Discharge criteria must be documented in the child's mental health treatment plan.

(14) "Discharge summary" means written documentation of the last service contact with the child. Documentation must include the diagnosis at enrollment, and a summary statement that describes the effectiveness of treatment modalities and progress, or lack of progress, toward treatment objectives as documented in the mental health treatment plan. The discharge summary also includes the reason for discharge, changes in diagnosis during treatment, current level of functioning, prognosis, and recommendations for further treatment. Discharge summaries are completed no later than 30 calendar days following a planned discharge and 45 calendar days following an unplanned discharge.

(15) "DSM" means the text revision of the 4th edition of the "Diagnostic and Statistical Manual of Mental Disorders" (DSM-IV-TR) published by the American Psychiatric Association.

(16) "Evidence-based practice" or "EBP" means clinical and preventive mental health services that are based on the most current information from generally accepted scientific research and approved by OMHAS.

(17) "Family" means the biological or legal parents, siblings, other relatives, foster parents, legal guardians, caregivers and other primary relationships to the child whether by blood, adoption, legal or social relationship.

(18) "Family support" means the provision of supportive services. It includes: support to caregivers at community meetings; assistance to families in system navigation and managing multiple appointments; supportive home visits; peer support, parent mentoring and coaching; advocacy; and furthering efforts to develop natural and informal community supports.

(19) "Guardian" means a parent, other person or agency legally in charge of the affairs of a minor child and having the authority to make decisions of substantial legal significance concerning the child.

(20) "ICTS discharge criteria" means the written diagnostic, behavioral, and functional indicators the child and family will meet to transition out of ICTS services as documented in a child's service coordination plan.

(21) "ICTS discharge summary" means a written document developed by the child and family team that is completed prior to discharge from intensive community-based treatment and support services that is based on the service coordination plan. It includes: a review of service coordination planning; type and duration of services, supports, and levels of care utilized; concerns that arose during the planning process; and significant child and family accomplishments. The summary will also include recommendations about and planning to coordinate access to ongoing services and supports that would benefit the child and family as well as any other transition planning that will ensure continuity of care.

(22) "Informed consent to treatment" means that the information about a specific diagnosis and the risks or benefits of treatment options and the consequences of not receiving a specific treatment are understood by the child, if able, and the parent or guardian, if involved. The person consenting to treatment voluntarily agrees in writing, as required in ORS 430.210(d), to a prescribed treatment for the specific diagnosis.

(23) "Intensive community-based treatment and support services" or "ICTS" means a specialized set of in-home and community-based supports and mental health treatment services that are delivered in the most normative, least restrictive setting. Intensive community-based treatment and support services include, but are not limited to: crisis prevention and intervention; care coordination; case management; individual, group and family therapy; psychiatric services; skills training; family support; respite care; and team-driven service coordination planning.

(24) "Intensive treatment services" or "ITS" means a specific range of service components in the system of care. Intensive treatment services include treatment foster care, therapeutic group homes, psychiatric day treatment, partial hospitalization, psychiatric residential treatment, subacute care or other services as determined by OMHAS that provide active psychiatric and mental health treatment for children with severe emotional disorders and their families.

(25) "Level of care" means the relative amount and intensity of mental health services provided from the least restrictive and least intensive in a community-based setting to the most restrictive and most intensive in an inpatient setting. Children are to be served in the most normative, least restrictive, least intrusive level of care appropriate to their treatment history, degree of impairment, current symptoms and the extent of family or other supportive involvement.

(26) "Level of need determination" means the OMHAS approved process by which children are assessed for medically appropriate mental health treatment.

(27) "Licensed Medical Practitioner" or "LMP" means a board-certified or board-eligible child and adolescent psychiatrist licensed to practice in the State of Oregon.

(28) "Local Mental Health Authority" or "LMHA" means one of the following entities:

(a) The board of county commissioners of one or more counties that establishes or operates a community mental health and developmental disabilities program;

(b) The tribal council, in the case of a federally recognized tribe of Native Americans, that elects to enter into an agreement to provide mental health services; or

(c) A regional local mental health authority comprised of two or more boards of county commissioners.

(29) "Medically appropriate" means services, which are required for prevention (including preventing a relapse), diagnosis or treatment of mental health conditions. Services are appropriate and consistent with the diagnosis; consistent with treating the symptoms of a mental illness or treatment of a mental condition; appropriate with regard to standards of good practice; and generally recognized by the relevant scientific community as effective. Services are not solely for the convenience of the provider of the services, child or family; and are the most cost effective of the alternative levels of services, which can be safely and effectively provided to the child and family.

(30) "Mental Health Organization" or "MHO" means an entity under a risk-bearing contract with OMHAS to provide mental health services on a prepaid, capitated basis.

(31) "Mental status exam" means the face-to-face assessment by a QMHP of a child's mental functioning within a developmental and cultural context. It includes descriptions of appearance, behavior, speech, language, mood and affect, suicidal or homicidal ideation, thought processes and content and perceptual difficulties including hallucinations and delusions. Cognitive abilities are also assessed and include orientation, concentration, general knowledge, intellectual ability, abstraction abilities, judgment, and insight appropriate to the age of the child.

(32) "Office of Mental Health and Addiction Services" or "OMHAS" means the program office of the Department of Human Services responsible for the administration of mental health and addiction services for the State of Oregon.

(33) "Paraprofessional" means a family member, peer, natural support, or other person whose education, experience, and competence are adequate to permit them to provide direct mental health services such as family support and respite care to children, youth, and families under the supervision of a QMHP.

(34) "Qualified Mental Health Associate" or "QMHA" means a person who delivers services under the direct supervision of a Qualified Mental Health Professional and who meets the following minimum qualifications as documented by the provider:

(a) Has a bachelor's degree in a behavioral sciences field, or a combination of at least three years work, education, training or experience; and

(b) Has the competency necessary to:

(A) Communicate effectively;

(B) Understand mental health assessment, treatment and service terminology and to apply the concepts;

(C) Provide psychosocial skills development; and

(D) Implement interventions as assigned on a treatment plan.

(35) "Qualified Mental Health Professional" or "QMHP" means a Licensed Medical Practitioner or any other person who meets the following minimum qualifications as documented by the provider:

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- (a) Holds any of the following educational degrees:
- (A) Graduate degree in psychology;
  - (B) Bachelor's degree in nursing and licensed by the State of Oregon;
  - (C) Graduate degree in social work;
  - (D) Graduate degree in a behavioral science field;
  - (E) Graduate degree in recreational, music, or art therapy;
  - (F) Bachelor's degree in occupational therapy and licensed by the State of Oregon.

(b) Whose education and experience demonstrate the competency to: identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social and work relationships; conduct a mental status examination; document a multiaxial DSM diagnosis; write and supervise a treatment plan; conduct a Comprehensive Mental Health Assessment; and provide individual, family and/or group therapy within the scope of their training.

(36) "Respite care" means planned and emergency interventions designed to provide temporary relief from care giving in order to maintain a stable and safe living environment. Respite care can be provided in or out of the home and includes supervision of and behavioral support for the child.

(37) "Service coordination plan" means a written summary document that incorporates and supports the relevant plans, services, and supports that are being provided to the child and family by the providers, agencies, and others who comprise the child and family team as well as defining roles and responsibilities of each party. The service coordination plan is formulated by the team and approved by the family.

(38) "Service intensity" means the relative amount, frequency, intensity, and duration of mental health services provided to a child and family that is based on the assessed needs of the child and family specific to the child's diagnosis, level of functioning, and the acuity and severity of the child's psychiatric symptoms.

(39) "Skills training" means providing parenting information and behavior support training and planning to parents or caregivers as well as skills development for children and transitional youth. It may include developing and strengthening competencies that include but are not limited to areas such as anger management, stress reduction, conflict resolution, self-esteem, parent-child interactions, peer relations, drug and alcohol awareness, behavior support, managing symptoms, and adapting the home and other settings to mitigate triggers to maladaptive behavior. The goal of this service is to maintain a stable living environment, positive interpersonal relationships, and participation in developmentally appropriate activities.

(40) "Treatment plan" means the written plan developed jointly by the QMHP and the child with his or her family, if appropriate. The treatment plan specifies the DSM diagnosis, goals, measurable objectives, specific treatment modalities and evidence-based practices. It is based on a completed comprehensive mental health assessment or assessment update of the child's functioning and the acuity and severity of psychiatric symptoms.

Stat. Auth.: ORS 430.640 & 743.556  
Stats. Implemented: ORS 430.630  
Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05; MHD 6-2005, f. 6-24-05, cert. ef. 7-1-05

## 309-032-1250

### General Conditions of Participation for Children's Intensive Community-Based Treatment and Support Services Providers

Providers delivering or ensuring the provision of children's intensive community-based treatment and support services must:

- (1) Hold a valid Certificate of Approval issued by the Office of Mental Health and Addiction Services (OMHAS) to deliver intensive community-based treatment and support services, and, when applicable, a license or certification from the Department of Human Services, State Office for Children, Adults, and Families;
- (2) Maintain the organizational capacity and interdisciplinary treatment capability to deliver or ensure the provision of medically appropriate services to meet the assessed needs for treatment in the amount, intensity, and duration for each child specific to the child's diagnosis, level of functioning and the acuity and severity of the child's psychiatric symptoms;
- (3) Use evidence-based treatment methods appropriate for children with severe mental, emotional, or behavioral disorders and professional standards of care;
- (4) Assure that mental health services are provided under clinical supervision;
- (5) Maintain policies describing procedures for admission, transition, and discharge;

(6) Demonstrate family involvement and participation in all phases of assessment, service planning and the child's treatment by documentation in the child's clinical record. At a minimum there must be documentation that all completed assessments have been reviewed and explained to the family or youth of legal age and to the child in a developmentally appropriate fashion;

(7) Maintain a formal relationship with a family organization for the purpose of assuring that family voice is part of all decision making and planning for the development of services, quality assurance, and use of resources. The formal relationship includes the following:

- (a) The relationship is defined in a written agreement; and
- (b) Family representation is included on governing and advisory bodies in numbers that result in meaningful participation.

(8) Develop a policy on family involvement that includes specific supports to family members that address and prevent barriers to family involvement;

(9) Report suspected child abuse as required in ORS 419B.010;

(10) Enroll children in Client Process Monitoring System when the child's mental health services are funded all or in part by OMHAS funds;

(11) Maintain policies and procedures prohibiting on- or off-site non-professional relationships and activities between employees and children and their families unless the activities are approved by the provider and interdisciplinary team and identified as clinically appropriate services in the child's service plan;

(12) Provide services for children in a smoke free environment in accordance with Public Law 103.277, the Pro-Child Act;

(13) Demonstrate education service integration in all phases of assessment, service planning, active treatment, and transition and discharge planning by documentation in the child's clinical record;

(14) Maintain policies and procedures to ensure safety and provide for the emergency needs of children, families, and staff including:

- (a) Medical emergencies; and
- (b) Facility and environmental emergencies.

(15) Demonstrate cultural competency, gender responsiveness and language appropriateness in the delivery of services to clients and their families;

(16) Demonstrate oversight by a governing body whose membership reflects diverse community interests and whose organization and operation must be set out in writing;

(17) Develop and publish a comprehensive document which describes the mission statement, treatment philosophy, including research or evidence basis for treatment models used, and program descriptions for the provision of intensive community-based treatment and support services; and

(18) Develop policies and procedures for orientation of children and families that consider orientation times convenient for the family and that provide for adequate child and family preparation.

Stat. Auth.: ORS 430.640 & 743.556  
Stats. Implemented: ORS 430.630  
Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05; MHD 6-2005, f. 6-24-05, cert. ef. 7-1-05

## 309-032-1255

### Award and Applicability of Certificates of Approval to Provide Children's Intensive Community-Based Treatment and Support Services

Certificates of Approval to provide children's intensive community-based treatment and support services may be applied for by a mental health services provider as defined in OAR 309-012-0140. The mental health services provider must either hold a valid Certificate of Approval issued by OMHAS to provide Children's Intensive Mental Health Treatment Services or a Certificate of Approval issued jointly by OMHAS and a CMHP to provide Community Mental Health Treatment Services for Children.

(1) Mental health services providers who hold a current and valid Certificate of Approval to provide children's intensive mental health treatment services may apply to OMHAS for a Certificate of Approval to provide intensive community-based treatment and support services. Applications must include evidence that the Local Mental Health Authority has been notified and has been given an opportunity to comment about the ITS provider's efforts to become ICTS certified and about the ITS provider's potential to serve children from the child's LMHA area. Certification of an ICTS provider can be effective for a maximum of three years and may be renewed thereafter by OMHAS.

(2) Mental health services providers who hold a current and valid Certificate of Approval to provide community treatment services for children may apply to the CMHPs to recommend that OMHAS issue a Certificate of Approval to provide intensive community-based treatment



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and support services. Certification of an ICTS provider can be effective for a maximum of three years and may be renewed thereafter by OMHAS.

(3) Following the completion of the application process, and any reviews deemed necessary by OMHAS or the CMHP, one of the following determinations will be made by OMHAS:

(a) That the applicant may be awarded a Certificate of Approval based on demonstration of its capacity and willingness to operate in compliance with applicable administrative rules;

(b) That the applicant will not be awarded a Certificate of Approval because it has not demonstrated that it will comply with applicable administrative rules; or

(c) That the applicant may be awarded a Certificate of Approval with specified conditions as described in OAR 309-012-0200 and at the discretion of OMHAS, receive a time-limited Certificate of Approval of less than three years and may have conditions for compliance placed on the Certificate of Approval to provide intensive community-based treatment and support services.

(4) OMHAS may require a provider who is not in compliance with these rules to develop a Plan of Correction within a time period specified by OMHAS. OMHAS may accept, reject, or modify the Plan of Correction or require the provider to comply with a Plan of Correction directed and approved by OMHAS.

(5) OMHAS, at its discretion, may terminate the provider's Certificate of Approval to provide intensive community-based treatment and support services, withhold funds, or apply other applicable sanctions allowable in rule and statute for failure to comply with these rules.

Stat. Auth.: ORS 430.640 & 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05; MHD 6-2005, f. 6-24-05, cert. ef. 7-1-05

## 309-032-1260

### Service Coordination Planning

ICTS providers must ensure that children and families referred to them through the level of need determination process receive care coordination when supported by the family. Providers must ensure that:

(1) A child and family team is identified and organized jointly with the family;

(2) A child and family team meeting is convened and an initial Service Coordination Plan, including any necessary crisis prevention and intervention planning, is developed no later than 14 calendar days from the date the provider receives an authorized request for ICTS services;

(3) The Service Coordination Plan is completed within 30 calendar days from the date the provider receives an authorized request for ICTS services. The plan is reviewed and revised quarterly, and when changes in service coordination planning occur, by the child and family team. It includes:

(a) A strengths and needs assessment that includes all relevant domains of the comprehensive mental health assessment;

(b) Short- and long-term goals related to identified needs across domains;

(c) Planning that utilizes a combination of existing or modified formal services; newly created services; informal, formal and natural supports and community resources; and documentation of the individuals responsible for providing these services and supports;

(d) A proactive safety/crisis plan that utilizes professional and natural supports to provide 24 hours, seven days per week flexible response and is reflective of strategies to avert potential crises without placement disruptions and provide appropriate interventions when crises occur; and

(e) ICTS discharge criteria as well as transition planning and coordination of the child's discharge from intensive community-based treatment and support services.

(4) The child receives medically appropriate mental health services and supports that include evidence-based practices, at the appropriate level of care, as determined by the ongoing service coordination planning by the child and family team; and

(5) Services and supports are documented in the child's clinical record.

Stat. Auth.: ORS 430.640 & 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05; MHD 6-2005, f. 6-24-05, cert. ef. 7-1-05

## 309-032-1265

### Intensive Community-Based Treatment and Support Services

ICTS providers must ensure that intensive community-based treatment and support services are made available to children and families

referred to them through the level of need determination process. Services and supports must be provided by qualified individuals. Intensive community-based treatment and support services may be delivered at a clinic, facility, home, school, other provider/allied agency location or other setting as identified by the child and family team. Intensive community-based treatment and support services include but are not limited to:

(1) Providing or ensuring the provision of children's crisis services, which includes:

(a) 24 hours, seven days per week face-to-face or telephone screening to determine the need for immediate services for any child requesting assistance or for whom assistance is requested;

(b) 24 hours, seven days per week capability to conduct, by or under the supervision of a QMHP, a mental health status examination to determine the child's condition and the interventions necessary to stabilize the child;

(c) Provision of medically appropriate child and family, psychological, and psychiatric services necessary to stabilize the child;

(d) Referral to the appropriate level of care and linkage to other medically appropriate interventions necessary to protect and stabilize the child; and

(e) Linkage to appropriate social services.

(2) Comprehensive mental health assessment or assessment update.

(3) Psychiatric services provided by a Licensed Medical Practitioner.

(4) Medication management and monitoring.

(5) Individual, group and family therapy provided by a QMHP who has a child and adolescent mental health background and experience providing community-based, intensive services to families.

(6) Care coordination provided by a QMHP or QMHA supervised by a QMHP who has:

(a) Demonstrated competencies in child and adolescent mental health and experience providing intensive services to families;

(b) Extensive knowledge about services and resources available to children and families in the community;

(c) Experience facilitating service coordination meetings and collaborating with system partners; and

(d) Experience facilitating crisis prevention and intervention services.

(7) Case management provided by a QMHP or QMHA supervised by a QMHP who has:

(a) Demonstrated competencies in child and adolescent mental health and experience providing intensive services to families;

(b) Extensive knowledge about services and resources available to children and families in the community; and

(c) Experience facilitating crisis prevention and intervention services.

(8) Skills training provided by a QMHP or QMHA supervised by a QMHP who has:

(a) Demonstrated competency in child development, serious emotional and behavioral disorders and parenting-behavioral management;

(b) Extensive knowledge of community recreational, social and supportive resources; and

(c) Experience facilitating crisis prevention and intervention services.

(9) Family support and respite care provided by paraprofessionals who have:

(a) Specialized knowledge and experience that enables them to provide supportive services to families; and

(b) Received training that enables them to implement supportive services interventions to children and families coping with developmental, physical, medical, emotional and behavioral disorders.

Stat. Auth.: ORS 430.640 & 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05; MHD 6-2005, f. 6-24-05, cert. ef. 7-1-05

## 309-032-1270

### Staffing Requirements

(1) ICTS providers must have the clinical leadership and sufficient QMHP, QMHA and other staff to meet the 24-hours, seven days per week treatment needs of children served. The provider must establish policies and practices to assure:

(a) Availability of a LMP to meet the following requirements:

(A) Provide medical oversight of the clinical aspects of care and consult on clinical care;

(B) Prescribe medicine or otherwise assure that case management and consultation services are provided to obtain prescriptions, and prescribe therapeutic modalities to achieve the child's treatment and service coordination goals; and

(C) Participate in the provider's Quality Management process.

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(b) An executive director or clinical director who meets the following minimum qualifications:

(A) Masters degree in a human service-related field from an accredited school;

- (B) Five years experience in a human services program;
- (C) Documented professional references, training and academics; and
- (D) Subscribes to a professional code of ethics.

(2) ICTS providers must have adequate numbers of QMHP, QMHA and other staff whose care specialization is consistent with the duties and requirements of the specific level of service intensity. Professional staff must operate within the scope of their training and licensure.

(3) Staffing must be adequate to provide timely response to crises, potential crises, and other urgent and non-urgent child and family service needs 24 hours a day, seven days per week for the clients they serve.

(4) Providers must have adequate numbers of qualified supervisory staff to oversee service delivery in community settings by QMHP, QMHA, and other staff.

(5) Providers must document in personnel files that all supervisory and clinical staff meet all applicable professional licensing and/or certification, and QMHP or QMHA competencies.

(6) Providers must document in personnel files that supervisory and clinical staff are qualified and meet competencies to provide ICTS services as defined by these rules.

(7) Providers must maintain a personnel file for each employee that contains:

- (a) The employment application;
  - (b) Verification of a criminal history check as required by ORS 181.536–181.537;
  - (c) A written job description;
  - (d) Documentation and copies of relevant licensure and/or certification that the employee meets applicable professional standards;
  - (e) Annual performance appraisals;
  - (f) Annual staff development and training activities;
  - (g) Employee incident reports;
  - (h) Disciplinary actions;
  - (i) Commendations; and
  - (j) Reference checks.
- Stat. Auth.: ORS 430.640 & 743.556  
Stats. Implemented: ORS 430.630  
Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05; MHD 6-2005, f. 6-24-05, cert. ef. 7-1-05

## 309-032-1275

### Behavior Support

Providers must have a written behavior support policy specifying which behavior support practices may be used by the provider, the circumstances under which they may be used, and how the practices will be clinically reviewed. Manual restraint, mechanical restraint, and seclusion may only be used by providers who are certified by OMHAS to use restraint and seclusion as outlined in OAR 309-032-1100 through 309-032-1230. To ensure that providers are administering and documenting well defined responses of planned and therapeutic interventions to specific target behaviors, the provider's behavior support policy must:

(1) Outline behavior support techniques and treatment interventions used in accordance with a process established by care, treatment, and service leaders;

(2) Require that the selection of interventions considers clinical appropriateness and minimizes restrictiveness of interventions;

(3) Specify that a behavior support plan that outlines individualized behavior support techniques and interventions will be developed, implemented, and reviewed for each child. The policy must specify that each child must have thresholds of behavior support interventions that will activate a clinical review. The review must occur when thresholds have been surpassed and at each service coordination plan review;

(4) Establish a framework, which assures that the child, family, and others who comprise the child and family team have involvement with the child's behavior support plan, and that families are educated about and consent to the plan and treatment interventions, and are involved in the monitoring and updating of the plan;

(5) Describe the manner in which staff, paraprofessionals, or others identified in the behavior support plan will be trained to maintain the child's behavior support plan and manage aggressive, assaultive, or other problem behaviors and de-escalate volatile situations through a crisis intervention training program;

(6) Specify behavior support interventions and procedures that are prohibited including:

(a) Procedures that are implemented by another client or unauthorized person;

(b) Procedures that deny basic needs such as diet, water, shelter, or essential clothing; and

(c) Physical punishment or fear-eliciting procedures.

(7) Require that the provider review and update the behavior support policies, procedures, and practices annually; and

(8) Be reviewed and approved by the provider's clinical leaders.

Stat. Auth.: ORS 430.640 & 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05; MHD 6-2005, f. 6-24-05, cert. ef. 7-1-05

## 309-032-1280

### Establishment and Maintenance of Clinical Records

(1) A separate, individualized clinical record must be opened and maintained for each child served by an ICTS provider. If the ICTS provider is also the outpatient or ITS provider or both, the clinical record will include documentation of outpatient, ITS, and ICTS services.

(2) Each clinical record must be uniform in organization, readily identifiable and accessible, and contain all of the components required by this rule in a current and complete manner.

(3) All documentation required in this rule must be signed by the staff providing the service and making the entry. Signature must include the person's academic degree or professional credential and the date signed.

(4) All procedures in this rule requiring consent and the provision of such information to the consenting custodial parent or guardian or where appropriate, the child, must be documented in the clinical record on forms describing what the child or adult giving consent has been informed of, and asked to consent to, and signed and dated by the consenting person. If the provider does not obtain the required documentation, the reasons must be specified in the clinical record and signed by the qualified supervisor of the person responsible for provision of treatment services to the child.

(5) Errors in the clinical record must be corrected by lining out the incorrect data with a single line in ink, and then adding the correct information, the date corrected, and the initials of the person making the correction. Errors in paper or electronic health records may not be corrected by removal or obliteration.

(6) References to other persons being treated by the CMHP, CMHP subcontractors, or other providers when included in the child's clinical record must preserve the confidentiality of the other clients.

(7) Clinical records must be secured, safeguarded, stored, and retained in accordance with applicable Oregon Revised Statutes and Oregon Administrative Rules.

(8) All clinical records are confidential to the extent provided for in OAR 309-032-1030(9) and other state and federal laws, rules, or regulations.

Stat. Auth.: ORS 430.640 & 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05; MHD 6-2005, f. 6-24-05, cert. ef. 7-1-05

## 309-032-1285

### Clinical Record Documentation Requirements

The child's clinical record must contain adequate written information that is readily accessible and uniformly placed in the clinical record to include:

(1) Identifying data including the child's name, date of birth, sex, address, phone number, and name of parent(s) or legal guardian including an address and phone number if different;

(2) Level of need determination documentation;

(3) A comprehensive mental health assessment or assessment update to be completed within 14 calendar days from the date the provider receives an authorized request for ICTS services. An assessment update must include the most current information related to all domains of the Comprehensive Mental Health Assessment. Comprehensive mental health assessments and assessment updates are updated annually and reviewed and approved by the LMP;

(4) An individualized treatment plan to be completed within 30 calendar days from the date the provider receives an authorized request for ICTS services. The treatment plan is reviewed and revised quarterly and when changes in treatment planning occur and is approved by the LMP;

(5) A service coordination plan to be completed within 30 calendar days from the date the provider receives an authorized request for ICTS services. The plan is reviewed and revised quarterly, and when changes in service coordination planning occur, by the child and family team;

(6) Documentation of child and family team meetings;

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(7) Documentation of the services recommended by the child and family team;

(8) Progress notes documenting specific treatments, interventions, and activities related to the implementation of the service coordination plan and the treatment plan;

(9) In addition to OAR 309-032-1285(7), monthly summary progress notes by the care coordinator that document that the child and family team has discussed progress with treatment and service coordination planning and if necessary convened a child and family team meeting to facilitate timely and appropriate service coordination planning;

(10) Written ICTS discharge criteria as documented in the service coordination plan;

(11) A written ICTS discharge summary related to the service coordination plan;

(12) Written discharge criteria as documented in the treatment plan;

(13) A written discharge summary related to the treatment plan; and

(14) A medication service record if medication is prescribed on the treatment plan.

Stat. Auth.: ORS 430.640 & 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05; MHD 6-2005, f. 6-24-05, cert. ef. 7-1-05

## 309-032-1290

### Child & Family Rights

Providers must establish written policies and procedures pertaining to child and family rights. The written statement of rights must be posted prominently in simple, easy to understand language on a form devised by the provider or the OMHAS. Written information must be provided in the non-English languages of the clients served. Information about rights must be available in alternate formats, taking into consideration the special needs of children and families. At the time of admission the provider must give this form to the person legally giving consent to treatment of the child. In addition, these rights must be explained orally at the time of admission to the person giving consent to treatment and to the child, in a manner appropriate to the child's developmental level. Statement of Rights must include the following:

(1) The right to consent to treatment in accordance with ORS 109.640 and 109.675. A custodial parent or legal guardian, or a minor child under conditions described below, must give written informed consent to diagnosis and treatment.

(a) Minor children can give informed consent for outpatient diagnosis and treatment for a mental or emotional disorder in the following circumstances:

(A) Under age 18 and lawfully married.

(B) Age 14 or older.

(b) If the child is initially served in a crisis situation, these rights must be explained as soon as clinically practical, but not more than five working days from the initiation of services if the child who received the crisis service remains in service.

(c) The custodial parent or legal guardian of any minor, age 14 or older who has consented to outpatient treatment or diagnosis, must be involved before the end of treatment unless:

(A) The parents refuse;

(B) There are clear clinical indications to the contrary;

(C) The child has been sexually abused by the parent; or

(D) The child has been legally emancipated by the court, or has been self sustaining for 90 days prior to obtaining treatment. As required in ORS 109.675, such refusal or the reasons for exclusion must be documented in the child's clinical record.

(2) The right to refuse services. The person giving consent to treatment has the right to refuse service, including any specific treatment procedure. If serious consequences may result from refusing a service, the provider must explain the consequences verbally or in writing to the custodial parent, the guardian, or the child who is refusing service. Service refusal must be documented in the clinical record.

(3) The right to confidentiality in accordance with ORS 179.505, 107.154, 418.312, and any other applicable state and federal regulation.

(4) The right to consent to disclosure of clinical records. The person consenting to treatment, usually the custodial parent or guardian, has the right to authorize disclosure of the child's clinical record in accordance with ORS 179.505 and any other applicable state and federal regulation.

(5) The right to immediate inspection of the clinical record unless access is restricted in accordance with ORS 179.505.

(a) The child, if able, and the custodial parent(s) or guardian of a minor child has the right to immediate inspection of the record.

(b) A copy of the record is to be provided within five working days of a request for it. The person requesting the record is responsible for payment for the cost of duplication, after the first copy.

(c) Identifying and clinical information about the child must be protected in provider publications such as newsletters and brochures.

(6) The right to participate in treatment planning and service coordination. The child, if appropriate, and the custodial parent(s) or legal guardian and others of their choosing, must have the opportunity to participate in an informed way in the treatment planning and service coordination process for the child, and in the review, at least every three months, of the child's progress toward treatment goals and objectives. At a minimum, the following information should be discussed:

(a) Treatment and other interventions to be undertaken;

(b) Alternative treatments or interventions available, if any;

(c) Projected time to complete the treatment process;

(d) Benefits which can reasonably be expected; and

(e) Risks that may be involved in treatment, if any.

(7) The right to make informed consent to fees for services. The amount and payment schedule of any fees to be charged must be disclosed in writing and agreed to by the person consenting to treatment.

(8) The rights contained in this section may be asserted and exercised by the child (except where the law requires that only the parent or guardian may exercise a particular right), the child's parent or guardian, or any representative of the child.

Stat. Auth.: ORS 430.640 & 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05; MHD 6-2005, f. 6-24-05, cert. ef. 7-1-05

## 309-032-1295

### Quality Management

Providers must have a planned, systematic and ongoing process for monitoring, evaluating and improving the quality and appropriateness of services provided to children and families. Rules related to Quality Management and Quality Assurance as set forth in OAR 309-032-1060 are applicable to ICTS providers who are certified as providers of Community Mental Health Treatment Services for Children. Rules related to Quality Management and Quality Assurance as set forth in OAR 309-032-1295 are applicable to ICTS providers who are certified as providers of Children's Intensive Mental Health Treatment Services and providers of both Children's Intensive Mental Health Treatment Services and Community Mental Health Treatment Services for Children. Providers will implement a Quality Assurance system, which will assure compliance with the provisions of OAR 309-032-1240 through 309-032-1305.

Stat. Auth.: ORS 430.640 & 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05; MHD 6-2005, f. 6-24-05, cert. ef. 7-1-05

## 309-032-1300

### Grievances and Complaints

Rules related to grievances, complaints, service denials, appeals, and hearing requests as set forth in OAR 309-032-1030(4)-(6) are applicable to ICTS providers who are certified as providers of Community Mental Health Treatment Services for Children. Rules related to complaints, service denials, appeals, and hearing requests as set forth in OAR 309-032-1210 are applicable to ICTS providers who are certified as providers of Children's Intensive Mental Health Treatment Services and providers of both Children's Intensive Mental Health Treatment Services and Community Mental Health Treatment Services for Children.

Stat. Auth.: ORS 430.640 & 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05; MHD 6-2005, f. 6-24-05, cert. ef. 7-1-05

## 309-032-1305

### Variance

A variance from portions of these rules that are not derived from federal regulations or the Office of Medical Assistance Program (OMAP) General Rules may be granted for a period of up to one year or a time period specified on the provider's Certificate of Approval in the following manner:

(1) The provider must submit a written request to the Assistant Administrator of OMHAS, which includes:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice proposed; and



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(d) A plan and timetable for compliance with the section of the rule from which the variance is sought.

(2) The Assistant Administrator of OMHAS must approve or deny the request for variance in writing.

(3) OMHAS will notify the provider of the decision in writing within 30 days of the receipt of the request.

(4) Appeal of the denial of a variance request must be to the Administrator of OMHAS whose decision will be final.

(5) All variances must be reapplied for as directed by OMHAS.

Stat. Auth.: ORS 430.640 & 743.556

Stats. Implemented: ORS 430.630

Hist.: MHD 1-2005(Temp), f. & cert. ef. 1-3-05 thru 7-1-05; MHD 6-2005, f. 6-24-05, cert. ef. 7-1-05

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**Adm. Order No.:** MHD 7-2005(Temp)

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

**Certified to be Effective:** 7-7-05 thru 1-3-06

**Notice Publication Date:**

**Rules Adopted:** 309-120-0021

**Rules Amended:** 309-120-0000, 309-120-0005

**Rules Suspended:** 309-120-0015, 309-120-0020

**Subject:** Effective immediately, the Department of Human Services, Office of Mental Health and Addiction Services is temporarily amending, suspending, and adopting rules relating to the Oregon Department of Corrections (ODOC) Mental Health Treatment Program. These rules are necessary in order to implement HB 2141 (2005) relating to the assignment and transfer of ODOC inmates to a state mental hospital listed in ORS 426.010 for evaluation and treatment.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

## 309-120-0000

### Purpose

Purpose. These rules prescribe procedures by which inmates of Department of Corrections facilities may be transferred to a state mental hospital listed in ORS 426.010.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075

Hist.: MHD 43, f. & ef. 11-5-76; MHD 5-1979, f. & ef. 8-14-79; MHD 12-1979(Temp), f. & ef. 11-21-79; MHD 3-1980, f. & ef. 4-1-80; MHD 1-1981, f. & ef. 6-5-81; MHD 1-1983(Temp), f. & ef. 1-5-83; MHD 8-1983, f. & ef. 4-1-83; Renumbered from 309-023-0010(1) and (2); MHD 3-1995, f. & cert. ef. 4-13-95; MHD 1-2000, f. & cert. ef. 1-24-00; MHD 7-2005(Temp), f. & cert. ef. 7-7-05 thru 1-3-06

## 309-120-0005

### Definitions

As used in these rules:

(1) "Department of Corrections Facility" means any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(2) "Inmate" means any person under the supervision of the Department of Corrections who is not on parole, probation, or post-prison supervision status.

(3) "Mentally Ill Inmate" means an inmate who, because of a mental disorder, is one or more of the following:

(a) Dangerous to self or others;

(b) Unable to provide for basic personal needs and is not receiving such care as is necessary for health or safety.

(c) An inmate who:

(A) Is chronically mentally ill, as defined in ORS 426.495;

(B) Within the previous three years, has twice been placed in a hospital or approved inpatient facility by the division under ORS 426.060;

(C) Is exhibiting symptoms or behavior substantially similar to those that preceded and led to one or more of the hospitalizations or inpatient placements referred to in subparagraph (B) above; and

(D) Unless treated, will continue to a reasonable medical probability, to physically or mentally deteriorate so that the inmate will become a person described under either or both subparagraph (A) or (B) above.

(4) "Mentally retarded inmate" means an inmate with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. Persons of borderline intelligence may be considered mentally retarded if there is also serious impairment of adaptive behavior. Definitions and classifications shall be consistent with the "Manual on Terminology and Classification in Mental Retardation" of the American Association on

Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(5) State mental hospital: As defined in ORS 426.010. Except as otherwise ordered by the Department of Human Services pursuant to ORS 179.325, the Oregon State Hospital in Salem, Marion County, and the Eastern Oregon Psychiatric Center in Pendleton, Umatilla County, shall be used as state hospitals for the care and treatment of mentally ill persons who are assigned to the care of such institutions by the department or who have previously been committed to such institutions.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075

Hist.: MHD 43, f. & ef. 11-5-76; MHD 5-1979, f. & ef. 8-14-79; MHD 12-1979(Temp), f. & ef. 11-21-79; MHD 3-1980, f. & ef. 4-1-80; MHD 1-1981, f. & ef. 6-5-81; MHD 1-1983(Temp), f. & ef. 1-5-83; MHD 8-1983, f. & ef. 4-1-83; Renumbered from 309-023-0010(3); MHD 3-1995, f. & cert. ef. 4-13-95; MHD 1-2000, f. & cert. ef. 1-24-00; MHD 7-2005(Temp), f. & cert. ef. 7-7-05 thru 1-3-06

## 309-120-0015

### Administrative Transfer

(1) The functional unit manager for mental health services for the Department of Corrections may request the superintendent of an MHDDSD institution to accept a mentally ill or mentally retarded inmate in administrative transfer. Unless the inmate voluntarily consents, no treatment or psychotropic drug shall be administered except when, in the judgment of the attending physician, treatment or medication is considered necessary to preserve the life of the inmate.

(2) In making the determination of eligibility of transfer, the functional unit manager for the Department of Corrections facility shall have the inmate evaluated. If, based on this evaluation and other pertinent information, the functional unit manager for mental health services determines that a transfer is appropriate, the functional unit manager may make a referral to the superintendent of the appropriate MHDDSD institution. In making a recommendation for administrative transfer, the functional unit manager of the Department of Corrections facility that houses the inmate may stipulate certain conditions governing transfer.

(3) If space is available, and the superintendent of the MHDDSD institution approves, the inmate will be administratively transferred to the MHDDSD institution.

(4) Within seven days after administrative transfer under this section, the superintendent of the MHDDSD institution, or designee, shall cause a psychiatric examination to be conducted to determine if there is probable cause to believe the inmate is a mentally ill person under ORS 426.005(1)(d), or mentally retarded under ORS Chapter 427. If the inmate is determined to be an alleged mentally ill or mentally retarded person, the superintendent of the MHDDSD institution or designee shall cause a two-physician hold to be filed with the judge of the circuit court in the county in which the MHDDSD institution is located. A pre-commitment investigation will be conducted within five judicial days by the county in which the MHDDSD institution is located.

(5) An administrative transfer shall not exceed 15 days from the date of transfer. If, at the expiration of 15 days, the superintendent of the MHDDSD institution has not petitioned the court for a commitment hearing pursuant to ORS 426.070 or ORS Chapter 427, the superintendent of the MHDDSD institution may request the Department of corrections to transport the inmate back to the Corrections facility.

(6) Physical transportation of the inmate from the Department of Corrections facility to the MHDDSD institution, and return, shall be the responsibility of the Department of Corrections.

Stat. Auth.: ORS 179.040 & 430.041

Stats. Implemented: ORS 179.473 - 179.478, 426 & 427

Hist.: MHD 43, f. & ef. 11-5-76; MHD 5-1979, f. & ef. 8-14-79; MHD 12-1979(Temp), f. & ef. 11-21-79; MHD 3-1980, f. & ef. 4-1-80; MHD 1-1981, f. & ef. 6-5-81; MHD 1-1983(Temp), f. & ef. 1-5-83; MHD 8-1983, f. & ef. 4-1-83; Renumbered from 309-023-0010(4); MHD 3-1995, f. & cert. ef. 4-13-95; MHD 1-2000, f. & cert. ef. 1-24-00; Suspended by MHD 7-2005(Temp), f. & cert. ef. 7-7-05 thru 1-3-06

## 309-120-0020

### Involuntary Assignment or Involuntary Transfer

(1) If an inmate is transferred to an MHDDSD institution by administrative transfer and is considered in need of treatment by the superintendent of the MHDDSD institution the superintendent of the MHDDSD institution shall be responsible for initiating involuntary court commitment procedures. The MHDDSD institution shall provide the court an investigation report comparable to that required under ORS 426.070 and make recommendation to the court.

(2) If the court commits the inmate who is mentally ill or mentally retarded to the MHDDSD, the inmate will remain in an MHDDSD institution.

# ADMINISTRATIVE RULES

(3) If the court does not commit the inmate to the MHDDSD, the inmate shall be returned immediately by the Department of Corrections to the Department of Corrections facility from which the inmate came.

(4) If an inmate of a Department of Corrections facility is determined by the court to be mentally retarded, pursuant to 179.478(2) that person shall be committed and transferred to an MHDDSD institution designated by the MHDDSD as soon as space in an appropriate unit is available; and any institution sentence to the Department of Corrections shall be terminated.

Stat. Auth.: ORS 179.040 & 430.041  
Stats. Implemented: ORS 179.473 - 179.478, 426 & 427  
Hist.: MHD 43, f. & ef. 11-5-76; MHD 5-1979, f. & ef. 8-14-79; MHD 12-1979(Temp), f. & ef. 11-21-79; MHD 3-1980, f. & ef. 4-1-80; MHD 1-1981, f. & ef. 6-5-81; MHD 1-1983(Temp), f. & ef. 1-5-83; MHD 8-1983, f. & ef. 4-1-83; Renumbered from 309-023-0010(4); MHD 3-1995, f. & cert. ef. 4-13-95; MHD 1-2000, f. & cert. ef. 1-24-00; Suspended by MHD 7-2005(Temp), f. & cert. ef. 7-7-05 thru 1-3-06

## 309-120-0021

### Administrative Transfers (Mentally Ill Inmates)

(1) The Administrator of ODOC's Counseling and Treatment Services Unit/designee may request the superintendent of a state mental hospital listed in ORS 426.010 to accept a transfer of a mentally ill inmate to a state mental hospital pursuant to these rules.

(2) An inmate may be transferred to a state mental hospital for stabilization and evaluation for mental health treatment for a period not to exceed 30 days unless the transfer is extended pursuant to a hearing required by paragraph (6) of this subsection.

(3) If space is available and the superintendent of the state mental hospital approves, the inmate shall be transferred.

(4) The Department of Human Services shall provide for an administrative commitment hearing for administrative commitment or extension of the transfer of the inmate if:

(a) The Department of Human Services determines that administrative commitment for treatment for a mental illness is necessary or advisable or that the Department of Human Services needs more than 30 days to stabilize or evaluate the inmate; and

(b) The inmate does not consent to the administrative commitment or an extension of the transfer.

(c) The administrative commitment hearing process shall, at a minimum, include the following procedures:

(A) Written notice to the inmate that an administrative commitment to a state mental hospital or an extension of the transfer is being considered. The notice required by this subparagraph must be provided far enough in advance of the hearing to permit the inmate to prepare for the hearing.

(B) Disclosure to the inmate, at the hearing, of the evidence that is being relied upon for the administrative commitment or the extension of the transfer.

(C) An opportunity, at the hearing, for the inmate to be heard in person and to present documentary evidence.

(D) An opportunity, at the hearing, for the inmate to present the testimony of witnesses and to confront and cross-examine witnesses called by the state. The opportunity required by this subparagraph may be denied upon a finding by the decision maker of good cause for not permitting the inmate to present the testimony of witnesses or confront or cross-examine witnesses called by the state.

(E) An independent decision maker for the hearing.

(F) A written statement by the decision maker of the evidence relied upon by the decision maker and the reasons for administratively committing the inmate or extending the transfer.

(G) A qualified and independent assistant for the inmate to be provided by the state if the inmate is financially unable to provide one.

(H) Effective and timely notice of the procedures required by subparagraphs (A) to (G) of this rule.

(d) Provide that an inmate may not be administratively committed involuntarily unless the independent decision maker finds by clear and convincing evidence that the inmate or is a mentally ill person as defined in ORS 426.005.

(5) The duration of an administrative commitment pursuant to an administrative commitment hearing be no more than 180 days unless the administrative commitment is renewed in a subsequent administrative commitment hearing.

(6) Notwithstanding this paragraph, an administrative commitment may not continue beyond the term of incarceration to which the inmate was sentenced.

(7) An inmate who is transferred to state mental hospital for mental health evaluation and treatment has the rights to which persons are entitled under ORS 179.485.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075  
Hist.: MHD 7-2005(Temp), f. & cert. ef. 7-7-05 thru 1-3-06

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**Adm. Order No.:** MHD 8-2005(Temp)

**Filed with Sec. of State:** 7-15-2005

**Certified to be Effective:** 7-15-05 thru 1-7-06

**Notice Publication Date:**

**Rules Adopted:** 309-120-0070, 309-120-0075, 309-120-0080

**Subject:** Effective immediately, the Department of Human Services (DHS), Office of Mental Health and Addiction Services is temporarily adopting rules relating to the Oregon Youth Authority (OYA) Mental Health Treatment Program. These rules are necessary in order to implement HB 2141 (2005) relating to the assignment and transfer of OYA offenders to a state mental hospital listed in ORS 426.010 or a facility designated by DHS for evaluation and treatment.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

## 309-120-0070

### Purpose

These rules prescribe procedures by which offenders in Oregon Youth Authority (OYA) close custody facilities may be transferred to a state mental hospital or a facility designated by the Department of Human Services (DHS) for evaluation and treatment.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 420.500 & 420.505

Stats. Implemented: ORS 179.040, 179.473, 179.475, 420.500 & 420.505

Hist.: MHD 8-2005(Temp), f. & cert. ef. 7-15-05 thru 1-7-06

## 309-120-0075

### Definitions

As used in these rules:

(1) "Close custody facility" means any of the secure facilities operated by the OYA, including, but not limited to, youth correctional facilities, work/study camps, and transition camps.

(2) "Facility designated by the Department of Human Services (DHS)" means a hospital or secure non-hospital facility designated by DHS to provide evaluation and treatment services for offenders under the age of 18.

(3) "Mentally ill offender" means an offender who, because of a mental disorder or a severe emotional disorder, is one or more of the following:

(a) Dangerous to self or others;

(b) Is unable to provide for basic personal needs and is not receiving such psychiatric care as is necessary for health or safety; or

(c) An offender, who unless treated, will continue, with a reasonable medical probability, to physically or mentally deteriorate so that the offender will become a person described under either or both subparagraph (a) or (b) above.

(4) "Offender" means all persons placed in OYA close custody facilities, including inmates in the legal custody of the Department of Corrections (DOC).

(5) "State Mental Hospital" means except as otherwise ordered by the DHS pursuant to ORS 179.325, the Oregon State Hospitals in Salem, Marion County, and Portland, Multnomah County, and the Eastern Oregon Psychiatric Center in Pendleton, Umatilla County, will be used as state hospitals for the care and treatment of mentally ill offenders age 18 and over who are transferred by the OYA pursuant to these rules. As defined in ORS 426.010.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 420.500 & 420.505

Stats. Implemented: ORS 179.040, 179.473, 179.475, 420.500 & 420.505

Hist.: MHD 8-2005(Temp), f. & cert. ef. 7-15-05 thru 1-7-06

## 309-120-0080

### Procedures for Transfer

(1) The OYA close custody facility Superintendent/Camp Director, or designee may request the superintendent of a state mental hospital or a director of a facility designated by DHS for evaluation and treatment to accept a transfer of a mentally ill offender to a state mental hospital or facility designated by DHS pursuant to these rules.

(2) If the superintendent of the state mental hospital or facility designated by DHS approves, the offender will be transferred.

(3) An offender may be transferred to a state mental hospital or a facility designated by DHS for stabilization and evaluation for mental health treatment for a period not to exceed 30 days unless the transfer is extended pursuant to a hearing required by paragraph (6) of this subsection.

# ADMINISTRATIVE RULES

(4) The DHS will provide for an administrative commitment hearing for administrative commitment or extension of the transfer of the offender if:

(a) The DHS determines that administrative commitment for treatment for a mental illness is necessary or advisable or that DHS needs more than 30 days to stabilize or evaluate the offender; and

(b) The offender does not consent to the administrative commitment or an extension of the transfer.

(c) The administrative commitment hearing process will, at a minimum, include the following procedures:

(A) Written notice to the offender that an administrative commitment to a state mental hospital or a facility designated by DHS or an extension of the transfer is being considered. The notice required by this subparagraph must be provided far enough in advance of the hearing to permit the offender to prepare for the hearing.

(B) Disclosure to the offender, at the hearing, of the evidence that is being relied upon for the administrative commitment or the extension of the transfer.

(C) An opportunity, at the hearing, for the offender to be heard in person and to present documentary evidence.

(D) An opportunity, at the hearing, for the offender to present the testimony of witnesses and to confront and cross-examine witnesses called by the state. The opportunity required by this subparagraph may be denied upon a finding by the decision maker of good cause for not permitting the offender to present the testimony of witnesses or confront or cross-examine witnesses called by the state.

(E) An independent decision maker for the hearing.

(F) A written statement by the decision maker of the evidence relied upon by the decision maker and the reasons for administratively committing the offender or extending the transfer.

(G) A qualified and independent assistant for the offender to be provided by the state if the offender is financially unable to provide one.

(H) Effective and timely notice of the procedures required by subparagraphs (a) to (g) of this rule.

(d) Provide that an offender may not be administratively committed involuntarily unless the independent decision maker finds by clear and convincing evidence that the offender is a mentally ill offender as defined in these rules.

(5) The duration of an administrative commitment pursuant to an administrative commitment hearing may be no more than 180 days unless the administrative commitment is renewed in a subsequent administrative commitment hearing.

(6) Notwithstanding this paragraph, an administrative commitment may not continue beyond the term of incarceration to which a DOC inmate was sentenced or beyond the period of time a youth offender may be placed in a youth correction facility.

(7) An offender who is transferred to a state mental hospital or to a facility designated by DHS has the rights to which the offender is entitled under ORS 179.485.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 420.500 & 420.505  
Stats. Implemented: ORS 179.040, 179.473, 179.475, 420.500 & 420.505  
Hist.: MHD 8-2005(Temp), f. & cert. ef. 7-15-05 thru 1-7-06

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

**Adm. Order No.:** PH 11-2005

**Filed with Sec. of State:** 6-30-2005

**Certified to be Effective:** 7-5-05

**Notice Publication Date:** 5-1-05

**Rules Amended:** 333-017-0000, 333-018-0005, 333-018-0010, 333-018-0015, 333-018-0018, 333-019-0002, 333-019-0005, 333-019-0010, 333-019-0017

**Rules Repealed:** 333-019-0015

**Subject:** To revise and update:

DIVISION 17, DISEASE CONTROL (DEFINITIONS AND REFERENCES)

333-017-0000 Definitions - Misnumbering corrected in (2)

DIVISION 18, DISEASE REPORTING

333-018-0005 To Whom Reports Shall Be Made - Formatting only

333-018-0010 Form of the Report - Adds requirement that labs provide age or date of birth and specimen collection date. Adds requirement that all health care providers, facilities, and labs coop-

erate with public health authorities by providing additional information relevant to investigations of cases or conditions, including outbreaks. Upon request such information shall be provided to any local health department or the Department of Human Services, regardless of county of residence.

333-018-0015 What Is to Be Reported and When - Adds to list of reportable diseases: SARS, CJD and other transmissible spongiform encephalopathies, and chronic hepatitis C (not just acute infections). Changes spelling of *Chlamydomphila psittaci* to reflect new taxonomy. Simplifies reporting timetables (moving all diseases that had been one week to one working day category).

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

**DIVISION 19, INVESTIGATION AND CONTROL OF DISEASES**

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

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

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

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

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

**Rules Coordinator:** Christina Hartman—(503) 731-4405

## 333-017-0000

### Definitions

For purposes of OAR divisions 17, 18, and 19, the following definitions shall apply.

(1) "AIDS": AIDS is an acronym for acquired immunodeficiency syndrome. An individual is considered to have AIDS when their illness meets criteria published in *Morbidity and Mortality Weekly Report*, Volume 41, Number RR-17, pages 1-4, December 18, 1992.

(2) "Animal Suspected of Having Rabies": An animal is suspected of having rabies when:

(a) It is a dog, cat, or ferret not known to be satisfactorily vaccinated against rabies (as defined in OAR 333-019-0017), or it is any other mammal; and

(b) It exhibits one or more of the following aberrant behaviors or clinical signs: unprovoked biting of persons or other animals, paralysis or partial paralysis of limbs, marked excitation, muscle spasms, difficulty swallowing, apprehensiveness, delirium, or convulsions; and it has no other diagnosed illness that could explain the neurological signs.

(3) "Approved Fecal Specimen": a specimen of feces from a person who has not taken any antibiotic orally or parenterally for at least 48 hours prior to the collection of the specimen. Improper storage or transportation of a specimen, or inadequate growth of the culture suggestive of recent antibiotic usage can, at the discretion of public health microbiologists, result in disapproval.

(4) "Bite, Biting, Bitten": The words bite, biting, and bitten refer to breaking of the skin by the teeth of an animal, or mouthing a fresh abrasion of the skin by an animal.

(5) "Case": A case is a person who has been diagnosed by a Health Care Provider as having a particular disease, infection, or condition, or whose illness meets defining criteria published in the DHS's *Investigative Guidelines*.

(6) "Child Care Facility": A child care facility is any facility as defined in ORS 657a.250(5) where care is provided to three or more children.

(7) "DHS": DHS is the Oregon Department of Human Services.

(8) "Food Handler": A food handler is any business owner or employee who handles food utensils or who prepares, processes, handles or serves food for people other than members of their immediate household, for example restaurant, delicatessen, and cafeteria workers, caterers, and concession stand operators.



# ADMINISTRATIVE RULES

(9) "Food Service Facility": A food service facility is an establishment that processes or serves food for sale.

(10) "Health Care Facility": A health care facility means any facility as defined in ORS 442.015(16), any Local Public Health Authority, or any home health agency as defined in ORS 443.005.

(11) "Health Care Provider": A health care provider is any person who has direct or supervisory responsibility for the delivery of health care or medical services. This includes but is not limited to: licensed physicians, nurse practitioners, physician assistants, nurses, dentists, and administrators, superintendents and managers of clinics and Health Care Facilities.

(12) "HIV": The human immunodeficiency virus, the causative agent of AIDS.

(13) "HIV Test": A Food and Drug Administration (FDA)-approved test for the presence of HIV, or for antibodies or antigens that result from HIV infection, or for any other substance specifically associated with HIV infection and not with other diseases or conditions.

(14) "HIV Positive Test": A positive result on the most definitive HIV test procedure used to test a particular individual. In the absence of the recommended confirming tests, this means the results of the initial test done.

(15) "Licensed Laboratory": A licensed laboratory is a medical diagnostic laboratory that is inspected and licensed by the DHS or otherwise licensed according to the provisions of the federal Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. § 263a). Any laboratory operated by the U.S. Centers for Disease Control and Prevention shall also be considered a Licensed Laboratory.

(16) "Licensed Physician": A licensed physician is any physician who is licensed by the Board of Medical Examiners for the State of Oregon, State Board of Podiatry Examiners, State Board of Chiropractic Examiners, or Naturopathic Board of Examiners.

(17) "Licensed Veterinarian": A licensed veterinarian is a veterinarian licensed by the Oregon Veterinary Medical Examining Board.

(18) "Local Public Health Authority": The Local Public Health Authority is the agency to which has been delegated the authority at the county or local level to administer and enforce the public health laws of Oregon under ORS 431.416.

(19) "Onset": Unless otherwise qualified, onset refers to the earliest time of appearance of signs or symptoms of an illness.

(20) "Outbreak": An outbreak is an increased number of cases of a particular disease that is or may be due to common or related exposures. Outbreaks are defined with respect to time interval, location, the normal frequency of the disease, and the characteristics of the persons or animals affected.

(21) "Pesticide Poisoning": Illness in a human that is caused by acute or chronic exposure to:

(a) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; or

(b) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant as defined in ORS 634.006(8).

(22) "Suspected Case": A suspected case is a person whose illness is thought by a Health Care Provider to be likely due to a reportable disease, infection, or condition. This suspicion may be based on signs, symptoms, or laboratory findings.

(23) "Suspected Lead Poisoning": A person with Suspected Lead Poisoning is any person who may be at risk for having elevated blood lead levels, defined as the presence of at least 25 micrograms of lead per deciliter of blood for individuals at least eighteen years old; or at least 10 micrograms of lead per deciliter of blood for individuals less than 18 years old. Suspected lead poisoning also includes blood lead tests done to monitor those persons who have had previously documented blood lead levels in excess of these limits.

(24) "Uncommon Illness of Potential Public Health Significance": These illnesses include:

(a) Any infectious disease with potentially life-threatening consequences that is exotic to or uncommon in Oregon, for example, variola (smallpox) or viral hemorrhagic disease; or

(b) Any illness related to a contaminated medical device or product; or

(c) Any acute illness suspected to be related to environmental exposure to any infectious or toxic agent or to any household product.

[Publications: Publications referenced are available from the DHS Office for Disease Prevention and Epidemiology, (503) 731-4024.]

Stat. Auth.: ORS 431, 432, 433.001, 433.004, 433.006, 433.235 - 433.284, 437, 443, 616 & 624

Stats. Implemented: ORS 431.110 & 431.120

Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 12-1983, f. & ef. 8-1-83; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 13-1990(Temp), f. 3-25-90, cert. ef. 8-1-90; HD 5-1991, f. 5-29-91, cert. ef. 4-1-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD

29-1994, f. & cert. ef. 12-2-94; OHD 2-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05

## 333-018-0005

### To Whom Reports Shall Be Made

(1) In general, if the patient is an Oregon resident, reports shall be made to the Local Public Health Authority for the patient's place of residence.

(2) With the consent of the Local Public Health Authority and DHS, reports may be made directly to DHS (e.g., via electronic reporting).

(3) In urgent situations when Local Public Health Authority staff are unavailable, case reports shall be made directly to DHS.

(4) Where the case is not an Oregon resident, reports shall be made either to the patient's Local Public Health Authority (if in another of the United States) or directly to DHS.

(5) Licensed Laboratories may report abnormal CD4 cell counts directly to the DHS's STD/HIV Program.

Stat. Auth.: ORS 431, 432, 433.001, 433.004, 433.006, 433.235 - 433.280, 437, 616 & 624  
Stats. Implemented: ORS 431, 432, 433.001, 433.004, 433.006, 433.012, 433.106, 433.110, 433.130, 433.235 - 433.280, 437, 616 & 624

Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 20-1985(Temp), f. & ef. 9-30-85; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 15-1988, f. 7-11-88, cert. ef. 9-1-88; HD 13-1990(Temp), f. 5-25-90, cert. ef. 8-1-90; HD 5-1991, f. 3-29-91, cert. ef. 4-1-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 29-1994, f. & cert. ef. 12-2-94; OHD 2-2001, f. & cert. ef. 10-19-01; OHD 3-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05

## 333-018-0010

### Form of the Report

(1) Each report from a Health Care Provider shall include at least the identity, address, and telephone number of the person reporting and of the attending Licensed Physician, if any; the name of the person affected or ill, that person's current address, telephone number, and date of birth; the diagnosed or suspected disease, infection, or condition, and the date of illness onset.

(2) Each report from a Licensed Laboratory shall include at least the name and telephone number of the reporting laboratory; the name, age or date of birth, and county of residence of the person from whom the laboratory specimen was obtained; the date the specimen was obtained, the name, address and telephone number of that person's Health Care Provider; the name or description of the test, and the test result.

(3) All reports shall be made by telephone or by other means approved by the Local Public Health Authority, consistent with the needs for timely reporting as provided in OAR 333-018-0015.

(4) Upon request, Health Care Providers and Licensed Laboratories shall provide to any Local Public Health Authority or DHS public health official additional information of relevance to the investigation or control of reportable diseases or conditions (e.g., reported signs and symptoms, laboratory test results (including negative results), potential exposures, contacts, and clinical outcomes).

Stat. Auth.: ORS 431, 432, 433.001, 433.004, 433.006, 433.235 - 433.280, 437, 616 & 624  
Stats. Implemented: ORS 431, 432, 433.001, 433.004, 433.006, 433.012, 433.106, 433.110, 433.130, 433.235 - 433.280, 437, 616 & 624

Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 13-1990(Temp), f. 5-25-90, cert. ef. 8-1-90; HD 5-1991, f. 3-29-91, cert. ef. 4-1-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 29-1994, f. & cert. ef. 12-2-94; OHD 3-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05

## 333-018-0015

### What Is to Be Reported and When

(1) Health Care Providers shall report all cases or suspected cases of the diseases, infections, microorganisms, and conditions specified below. The timing of Health Care Provider reports is specified to reflect the severity of the illness or condition and the potential value of rapid intervention by public health agencies.

(2) When Local Public Health Authorities cannot be reached within the specified time limits, reports shall be made directly to DHS, which shall maintain an around-the-clock public health consultation service.

(3) Licensed Laboratories shall report all test results indicative of and specific for the diseases, infections, microorganisms, and conditions specified below. Such tests include but are not limited to: microbiological culture, isolation, or identification; assays for specific antibodies; and identification of specific antigens, toxins, or nucleic acid sequences.

(4) Reportable diseases, infections, microorganisms, and conditions, and the time frames within which they must be reported are as follows:

(a) Immediately, day or night: *Bacillus anthracis* (anthrax); *Clostridium botulinum* (botulism); *Corynebacterium diphtheriae* (diphtheria); Severe Acute Respiratory Syndrome (SARS) and infection by SARS-coronavirus; *Yersinia pestis* (plague); intoxication caused by marine microorganisms or their byproducts (for example, paralytic shellfish poisoning, domoic acid intoxication, ciguatera, scombroid); any known or sus-

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pected common-source Outbreaks; any Uncommon Illness of Potential Public Health Significance.

(b) Within 24 hours (including weekends and holidays): *Haemophilus influenzae* (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); measles (rubeola); *Neisseria meningitidis* (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); Pesticide Poisoning; poliomyelitis; rabies (human or animal); rubella; *Vibrio* (all species).

(c) Within one Local Public Health Authority working day: *Bordetella pertussis* (pertussis); *Borrelia* (relapsing fever, Lyme disease); *Brucella* (brucellosis); *Campylobacter* (campylobacteriosis); *Chlamydia* (*Chlamydia psittaci* (psittacosis); *Chlamydia trachomatis* (chlamydiosis; lymphogranuloma venereum); *Clostridium tetani* (tetanus); *Coxiella burnetii* (Q fever); Creutzfeldt-Jakob disease and other transmissible spongiform encephalopathies; *Cryptosporidium* (cryptosporidiosis); *Cyclospora cayentanensis* (cyclosporiasis); *Escherichia coli* (Shiga-toxigenic, including *E. coli* O157 and other serogroups); *Francisella tularensis* (tularemia); *Giardia* (giardiasis); *Haemophilus ducreyi* (chancroid); hantavirus; hepatitis A; hepatitis B (acute or chronic infection); hepatitis C; hepatitis D (delta); HIV infection (does not apply to anonymous testing) and AIDS; *Legionella* (legionellosis); *Leptospira* (leptospirosis); *Listeria monocytogenes* (listeriosis); *Mycobacterium tuberculosis* and *M. bovis* (tuberculosis); *Neisseria gonorrhoeae* (gonococcal infections); pelvic inflammatory disease (acute, non-gonococcal); *Plasmodium* (malaria); *Rickettsia* (all species: Rocky Mountain spotted fever, typhus, others); *Salmonella* (salmonellosis, including typhoid); *Shigella* (shigellosis); *Taenia solium* (including cysticercosis and undifferentiated *Taenia* infections); *Treponema pallidum* (syphilis); *Trichinella* (trichinosis); *Yersinia* (other than pestis); any infection that is typically arthropod vector-borne (for example: Western equine encephalitis, Eastern equine encephalitis, St. Louis encephalitis, dengue, West Nile fever, yellow fever, California encephalitis, ehrlichiosis, babesiosis, Kyasanur Forest disease, Colorado tick fever, etc.); human bites by any other mammal; CD4 cell count < 200/ $\mu$ l ( $\text{mm}^3$ ) or CD4 proportion of total lymphocytes < 14%; hemolytic uremic syndrome.

(d) Within 7 days: Suspected Lead Poisoning (for laboratories; this includes all blood lead tests performed on persons with suspected lead poisoning).

Stat. Auth.: ORS 431, 432, 433.001, 433.004, 433.006, 433.235 - 433.284, 437, 616 & 624  
Stats. Implemented: ORS 431, 432, 433.001, 433.004, 433.006, 433.012, 433.106, 433.110, 433.130, 433.235 - 433.284, 437, 616 & 624  
Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 20-1985(Temp), f. & ef. 9-30-85; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 15-1988, f. 7-11-88, cert. ef. 9-1-88; HD 13-1990(Temp), f. 5-25-90, cert. ef. 8-1-90; HD 5-1991, f. 3-29-91, cert. ef. 4-1-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; OHD 22-2001, f. & cert. ef. 10-19-01; OHD 3-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05

## 333-018-0018

### Submission of Specimens to the Public Health Laboratory

Licensed Laboratories are required to forward aliquots or subcultures of the following to the Oregon State Public Health Laboratory:

(1) Suspected *Neisseria meningitidis* and *Haemophilus influenzae* from normally sterile sites.

(2) Suspected Shiga-toxigenic *Escherichia coli* (STEC), including *E. coli* O157, *Salmonella* spp., *Shigella* spp., *Vibrio* spp., *Listeria* spp., *Yersinia* spp., and *Mycobacterium tuberculosis*.

(3) Serum that tests positive for IgM antibody to hepatitis A virus.

Stat. Auth.: ORS 438  
Stats. Implemented: ORS 438.310  
Hist.: HB 248, f. 6-30-70, ef. 7-25-70; HD 28-1988, f. & cert. ef. 12-7-88; HD 20-1994, f. & cert. ef. 7-20-94; HD 6-1995, f. & cert. ef. 9-13-95; OHD 11-2001, f. & cert. ef. 5-16-01, Renumbered from 333-024-0050(5); OHD 3-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05

## 333-019-0002

### Cooperation with Public Health Authorities

(1) Health Care Providers, Health Care Facilities, and Licensed Laboratories shall cooperate with Local Public Health Authorities and DHS in the investigation and control of reportable diseases and conditions.

(2) Every Health Care Provider attending a person with a reportable disease, infection, or condition shall instruct the person in measures appropriate to controlling the spread of the disease.

Stat. Auth.: ORS 431, 432, 433, 437, 616 & 624  
Stats. Implemented: ORS 433.004, 433.106 & 433.130  
Hist.: OHD 4-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05

## 333-019-0005

### Conduct of Special Studies by the DHS

DHS may conduct special studies concerning the causes and prevention of diseases and other significant health conditions. Special studies

include any collection of information about the health status or potential health risk factors of individuals or groups of individuals, other than the routine collection of birth, death, and marriage information, and are not restricted to reportable diseases, infections, or conditions. DHS may collaborate with Local Public Health Authorities, other institutions, or other individuals in the conduct of these studies.

Stat. Auth.: ORS 431, 432, 433, 437, 616 & 624  
Stats. Implemented: ORS 433.006 & 433.065

Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 9-1997, f. & cert. ef. 6-26-97; OHD 4-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05

## 333-019-0010

### Imposition of Restrictions

(1) To protect the public health, persons who attend or work at schools or Child Care Facilities or who work at Health Care Facilities or Food Service Facilities shall not attend or work at these facilities whilst in a communicable stage of any restrictable diseases unless authorized to do so as hereunder specified.

(2) At all such facilities, restrictable diseases include: diphtheria, measles, *Salmonella* Typhi infection, shigellosis, Shiga-toxigenic *Escherichia coli* (STEC) infection, hepatitis A, tuberculosis, open or draining skin lesions infected with *Staphylococcus aureus* or *Streptococcus pyogenes*, and any illness accompanied by diarrhea or vomiting.

(3) At schools, Child Care, and Health Care Facilities, such restrictable diseases shall also include: chickenpox, pertussis, rubella, and scabies. Children in the communicable stages of hepatitis B infection may be excluded from attending school or child care if, in the opinion of the local health officer, the child poses an unusually high risk to other children (e.g., exhibits uncontrollable biting or spitting).

(4) At the discretion of local school authorities or the Local Public Health Authority, pediculosis may be considered a school-restrictable condition.

(5) Nothing in these rules prohibits the adoption of more stringent rules regarding exclusion from schools or Child Care Facilities. Such additional restrictions shall require formal certification that the disease or condition in question presents a significant public health risk in that setting. For schools, this action may be taken by the Local Public Health Authority or the local school governing body. For Child Care Facilities, this action may be taken by the Local Public Health Authority.

(6) The infection control committee at all Health Care Facilities shall adopt policies to restrict the work of employees with restrictable diseases in accordance with recognized principles of infection control. Nothing in these rules prohibits Health Care Facilities or the Local Public Health Authority from adopting additional or more stringent rules for exclusion from these facilities.

Stat. Auth.: ORS 431, 433, 437, 616 & 624

Stats. Implemented: ORS 433.260, 433.407, 433.411 & 433.419

Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; OHD 4-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05

## 333-019-0017

### Rabies Vaccination for Animals

(1) Except where specifically exempt, all dogs at least three months old shall be immunized against rabies by the age of six months. The following are exempt:

(a) Dogs brought temporarily into the state for periods of less than 30 days and kept under strict supervision by their owners;

(b) Dogs for which rabies immunization is contraindicated for health reasons, as determined by a licensed veterinarian subsequent to an examination. The reasons for the exemption and a specific description of the dog, including name, age, sex, breed, and color, shall be recorded by the examining veterinarian on a Rabies Vaccination Certificate, which shall bear the owner's name and address. The veterinarian shall also record whether the exemption is permanent, and if it is not, the date the exemption ends;

(c) Dogs that are owned by dealers, breeders, or exhibitors exclusively for sale or exhibition purposes and that are confined to kennels except for transportation under strict supervision to and from dog shows or fairs.

(2) Vaccination of an animal against rabies is valid only when performed:

(a) By a licensed veterinarian;

(b) By a veterinary technician (certified according to OAR 875-030-0010) under the direct supervision of a licensed veterinarian; or

(c) In the case of a need to vaccinate and the lack of an available veterinarian, by another person approved for this purpose by the State Public Health Veterinarian.

(3) To be considered immunized against rabies, dogs and cats must be vaccinated according to guidelines published by the U.S. Centers for

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Disease Control and Prevention in the *Compendium of animal rabies prevention and control*, 2005 MMWR 2005; 54 (No. RR-3).

(4) A Rabies Vaccination Certificate shall be completed and signed by the person performing the vaccination. That individual shall give the original and one copy to the dog's owner and retain one copy for the period for which the vaccination is in force. The Certificate must include at least the following information: owner's name and address; dog description by age, sex, color, breed; date of vaccination; due date for revaccination; type and lot number of vaccine used; and name and address of vaccinator.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 431, 432, 433 & 437  
Stats. Implemented: ORS 433.340, 433.345, 433.350, 433.355, 433.360, 433.367, 433.370 & 433.375  
Hist.: OHF 4-2002, f. & cert. ef. 3-4-02; PH 6-2003, f. & cert. ef. 5-22-03; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05

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

**Adm. Order No.:** SSP 7-2005

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**Rules Adopted:** 461-170-0025

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

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

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

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

Rule 461-120-0120 is being amended to bring the Oregon State Refugee Program in line with federal guidelines. The TVPRA (Trafficking Victims Protection Reauthorization Act of 2003) considers certain family members of trafficking victims as eligible for federally funded or administered benefits and services to the same extent as refugees. This includes: the TANF, OSIP, BCCM, MAA, MAF, OHP, OSIPM, SAC, GA, GAM, and Food Stamp programs.

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

Rule 461-125-0330 is being amended to remove the reference to Medical Disability Review Team (MDRT).

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

qualification. This amendment will change TANF program policy. It is not a clarification of current policy.

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

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

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

Rules 461-140-0040 and 461-145-0920 are being amended to clarify that gross income for self-employment is the gross sales and receipts and that newspaper carriers may be considered self-employed for all programs if the business considers them to be independent contractors.

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

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

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

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

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

Rule 461-160-0620 is being amended to conform with the requirements in Section 1924(d)(3)(B) of the Social Security Act, which indexes the amount of income a resident of a nursing facility or a resident of a living arrangement covered under Section 1915(c) of the Social Security Act, may divert back to their spouse who resides in the community. The applicable amount subject to diversion is a percentage of the federal poverty level, as published in the Federal Register on February 18, 2005, which is 150% for a two person family size.

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

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

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



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

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

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

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-101-0010

### Program Acronyms and Overview

(1) Acronyms are used when referring to each program (except Assessment and Repatriate). There is an acronym for each umbrella program (for instance, ERDC) and acronyms for each subprogram (for instance, ERDC-SBG).

(2) When no program acronym appears in a rule in chapter 461 of these rules, the rule with no program acronym applies to all programs listed in this rule. If a rule does not apply to all programs, the rule uses program acronyms to identify the programs to which the rule applies.

(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code (for instance, OSIP means OSIP-AB, OSIP-AD, and OSIP-OAA).

(4) ADC; Aid to Dependent Children. Financial aid to low-income families when children are deprived of parental support because of continued absence, death, incapacity, or unemployment. When used alone, ADC refers to all ADC programs. Use of the acronym, ADC, which stands for Aid to Dependent Children, and use of the phrase, Aid to Dependent Children, refer to the state's Temporary Assistance for Needy Families Program, and its acronym, TANF. The following codes are used for ADC subprograms:

(a) ADC-BAS; Aid to Dependent Children — Basic (includes eligibility based on continued absence, death, incapacity, or unemployment). ADC with deprivation based on unemployment is also denoted by ADC-BAS/UN.

(b) EA; Aid to Dependent Children — Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(5) ADCM; Aid to Dependent Children Medical. Medical aid to low-income families when children are deprived of parental support, as for ADC. Use of the acronym ADCM, which stands for Aid to Dependent Children Medical, and use of the phrase Aid to Dependent Children Medical refer to EXT, MAA, MAF, and SAC programs. When used alone, ADCM refers to all ADC-related medical programs. The following codes are used for ADCM subprograms:

(a) ADCM-BAS; Aid to Dependent Children Medical — Basic.

(b) ADCM-EXT; Aid to Dependent Children Medical — Extended. ADCM-EXT provides extended medical benefits to families after their ADC benefits end.

(c) ADCM-SAC; Aid to Dependent Children Medical — Substitute or Adoptive Care. ADCM-SAC gives medical coverage to children in substitute or adoptive care.

(6) The Assessment Program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is to convey the message that TANF is primarily a self-sufficiency development program and to help individuals find employment or other alternatives before they become dependent on public assistance.

(7) BCCM; Breast and Cervical Cancer Medical program.

(8) CAWEM; Citizen/Alien-Waived Emergent Medical. Medicaid coverage of emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and status requirements.

(9) EI; Employment Initiative. Program established to provide assistance to clients who have a disability and who want to work.

(10) ERDC; Employment — or Education-Related Day Care. Helps low-income families pay the cost of child care. When used alone, ERDC refers to all ERDC programs. The following codes are used for ERDC subprograms:

(a) ERDC-BAS; ERDC — Basic. Child care for working families.

(b) ERDC-SBG; ERDC — Student Block Grant. Child care for students.

(11) EXT; Extended Medical Assistance. The Extended Medical Assistance program provides medical assistance for a period of time after a family loses its eligibility for the Assessment Program, MAA, or MAF due to an increase in their child support or earned income.

(12) FS; Food Stamps. Helps low-income households maintain proper nutrition by giving them the means to purchase food.

(13) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(14) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(15) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based, service-provider agencies. The Department's rules for the program (OAR 461-135-1305 to 1335) were repealed July 1, 2001.

(16) JOBS; Job Opportunities and Basic Skills. An employment program for REF, REFM, and TANF clients. JOBS helps these clients attain self-sufficiency through training and employment. The program is part of Welfare Reform.

(17) JOBS Plus. Provides subsidized jobs rather than FS or TANF benefits. For TANF clients, JOBS Plus is a component of the JOBS Program; for FS clients and noncustodial parents of children receiving TANF, it is a separate employment program. Eligibility for TANF clients, FS clients, and noncustodial parents of children receiving TANF is determined by the Department. Eligibility for UI recipients is determined by the Oregon State Employment Department. When used alone, JOBS Plus includes only clients whose JOBS Plus program participation is through the Department of Human Services. JOBS Plus administered through the Oregon State Employment Department is known in chapter 461 of the Oregon Administrative Rules as Oregon Employment Department UI JOBS Plus. The following acronyms are used for specific categories:

(a) ADC-PLS; Clients eligible for JOBS Plus based on TANF.

(b) FS-PLS; Clients eligible for JOBS Plus based on FS.

(c) NCP-PLS; Noncustodial parents of children receiving TANF.

(18) MAA; Medical Assistance Assumed. The Medical Assistance Assumed program provides medical assistance to people who are eligible for the Assessment Program or ongoing TANF benefits.

(19) MAF; Medical Assistance to Families. The Medical Assistance to Families program provides medical assistance to people who are ineligible for MAA but are eligible for Medicaid using ADC program standards and methodologies that were in effect as of July 16, 1996.

(20) OFSET. The Oregon Food Stamp Employment Transition Program, which helps FS recipients find employment. This program is mandatory for some FS recipients.

(21) OHP; Oregon Health Plan. The Oregon Health Plan Program provides medical assistance to many low-income individuals and families. The program includes five categories of people who may qualify for benefits. The acronyms for these categories are:

(a) OHP-OPU; Adults. OHP coverage for adults who qualify under the 100 percent income standard. A person eligible under OHP-OPU is referred to as a health plan new/noncategorical (HPN) client.

(b) OHP-OPC; Children. OHP coverage for children who qualify under the 100 percent income standard.

(c) OHP-OP6; Children Under 6. OHP coverage for children under age 6 who qualify under the 133 percent income standard.

(d) OHP-OPP; Pregnant Females and their newborn children. OHP coverage for pregnant females who qualify under the 185 percent income standard and their newborn children.

(e) OHP-CHP; Persons Under 19. OHP coverage for persons under age 19 who qualify under the 185 percent income standard for medical assistance authorized by the Children's Health Insurance Program (CHIP) provision of the 1997 Balanced Budget Act.

(22) OSIP; Oregon Supplemental Income Program. Cash supplements and special need payments to persons who are blind, disabled, or 65 years of age or older. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:

(a) OSIP-AB; Oregon Supplemental Income Program — Aid to the Blind.

(b) OSIP-AD; Oregon Supplemental Income Program — Aid to the Disabled.

(c) OSIP-EPD; Oregon Supplemental Income Program - Employed Persons with Disabilities program. This program provides Medicaid cover-

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age for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIP-OAA; Oregon Supplemental Income Program — Old Age Assistance.

(23) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:

(a) OSIPM-AB; Oregon Supplemental Income Program Medical — Aid to the Blind.

(b) OSIPM-AD; Oregon Supplemental Income Program Medical — Aid to the Disabled.

(c) OSIPM-EPD; Oregon Supplemental Income Program Medical — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIPM-OAA; Oregon Supplemental Income Program Medical — Old Age Assistance.

(e) OSIPM-IC; Oregon Supplemental Income Program Medical — Independent Choices

(24) QMB; Qualified Medicare Beneficiaries. Additional medical coverage for Medicare recipients. When used alone, QMB refers to all QMB programs. The following codes are used for QMB subprograms:

(a) QMB-BAS; Qualified Medicare Beneficiaries — Basic. The basic QMB program.

(b) QMB-DW; Qualified Medicare Beneficiaries — Disabled Worker. Payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.

(c) QMB-SMB; Qualified Medicare Beneficiaries — Special Medicare Beneficiary. Payment of all or a portion of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.

(25) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(26) REFM or REFM-BAS; Refugee Assistance Medical — Basic. Medical coverage for low-income refugees.

(27) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(28) SAC; Medical Coverage for Children in Substitute or Adoptive Care.

(29) Senior Prescription Drug Assistance Program; provides that people 65 years of age or older can purchase prescription drugs at the Medicaid price.

(30) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

(31) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity, or unemployment. Cash assistance used to be known as ADC.

Stat. Auth.: ORS 411.060, 411.816 & 414.342

Stats. Implemented: ORS 411.060, 411.816 & 414.342

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-105-0010

### Rights of Clients

The Department's clients in programs regulated by chapter 461 of these rules have the following rights and the right to be informed of them:

(1) The right to information about the programs administered by the Department.

(2) The right to refuse to release information that was given to the Department to other agencies or people, unless the release is for purposes directly connected with administering the public assistance laws of Oregon.

(3) The right to refuse social services unless:

(a) The service is court-ordered; or

(b) Related to a case plan as defined in OAR 461-190-0161.

(4) The right, upon expressing dissatisfaction with an action of the Department, to obtain the Department's standard form for requesting a hearing.

(5) The right to request a hearing within 45 days (90 days for FS) of the date of notice informing clients that their benefits are:

(a) Authorized.

(b) Reduced, ended, or denied.

(c) Changed to vendor, protective, or two-party payments.

(6) The right to apply for any program administered by the Department.

(7) The right to have a decision on eligibility made by the Department:

(a) In the Food Stamp program, within 30 days from the filing date.

(b) In the OSIPM program, within 90 days from the date of request if a disability decision must be made, and in all other cases within 45 days.

(c) In all other programs, within 45 days from the date of request.

(8) The right to apply for and receive benefits and services from the Department and its contractors, grantees, agents and providers of services who receive payments from the Department which are funded in whole or in part with federal funds without discrimination on the basis of race, color, national origin or disability.

(9) The right to courteous, fair and dignified treatment by Department personnel.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-110-0370

### Filing Group; FS

For the Food Stamp program, the filing group is composed as follows:

(1) From the household group (see OAR 461-110-0210), the following people are excluded:

(a) Residents of commercial boarding houses.

(b) Ineligible students, as defined in OAR 461-135-0570.

(c) The following people who are paying to have meals provided, if they apply for benefits for themselves alone, or if the meal provider chooses not to apply for benefits for them:

(A) A member of the household group who pays a reasonable amount for meals (lodger).

(B) Persons in foster care.

(d) Members of the household group who, during the month the group applied for food stamps, received food-stamp benefits (or SSI benefits through the state of California that included food-stamp benefits) in a different filing group. This exclusion does not apply to a person who was the head of household in the prior household. This exclusion applies only in the initial month and, if necessary to meet notice requirements, in the month following the initial month.

(2) A member of the household group in foster care is excludable from the filing group — at the option of the foster caregiver — even if provided otherwise in this rule.

(3) A parent whose child is in the same household may be in a different filing group only if the child has reached the age of 22 years.

(4) A child under the age of 18 years must be in the same filing group with an adult in the child's household who exercises parental control over the child. For the purposes of this provision, parental control means the adult is responsible for the care, control, and supervision of the child or the child is financially dependent on the adult.

(5) Siblings in the same household group without their parent may be in separate filing groups if they purchase and prepare their food separately. If an adult sibling has parental control over a minor sibling, they must be in the same filing group.

(6) Spouses who are in the same household group must be in the same filing group.

(7) Members of a household group who pay other members of the household group for meals, but are not paying a reasonable amount for those meals, are in the same filing group with the other people in the household group. A reasonable amount is—

(a) An amount that equals or exceeds the Thrifty Food Plan for the person and anyone in that person's filing group, if more than two meals a day are provided; or

(b) An amount that equals or exceeds two-thirds of the Thrifty Food Plan for the person and anyone in that person's filing group, if two or fewer meals a day are provided.

# ADMINISTRATIVE RULES

(8) Members of a household group who purchase and prepare food together must be in the same filing group, except in the following situations:

(a) A paid live-in attendant and the attendant's minor children may choose not to be in the filing group with the people for whom they are providing services, even if they purchase and prepare food with those people, unless they are required by sections (3) to (6) of this rule to be in the same filing group.

(b) An elderly person and the person's spouse may be considered a separate filing group from the others with whom they purchase and prepare meals, if:

(A) The elderly person is unable to purchase and prepare food because of a disability considered severe and permanent; and

(B) The combined income of the other members of the household group does not exceed the following limit: [Table not included. See ED. NOTE.]

(9) For residents of an alcohol or drug treatment and rehabilitation program certified by the Department:

(a) A parent living with his or her children, under the age of 22 years, comprise one filing group.

(b) For all other residents, each applicant is a separate filing group.

(10) For residents of a residential care facility for which an employee of the facility is the authorized representative, each applicant is a separate filing group. If an employee of the facility is not the authorized representative, sections (3) to (6) of this rule apply.

(11) For residents of a homeless or domestic violence shelter, a filing group consists of:

(a) Residents who choose to apply together; or

(b) Residents who form filing groups according to the criteria in sections (3) to (6) of this rule.

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

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2001, F. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-120-0120

### Alien Status; REF, REFM

The following persons admitted lawfully under any of the following provisions of law meet the alien status requirements of the REF and REFM programs:

(1) A person paroled as a refugee or asylee under section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(d)(5)).

(2) A person admitted as a refugee under section 207 of the INA (8 U.S.C. 1157).

(3) A person granted asylum under section 208 of the INA (8 U.S.C. 1158).

(4) Cuban and Haitian entrants, in accordance with requirements in 45 CFR part 401.

(5) Certain Amerasians from Vietnam who are admitted to the U.S. as immigrants pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. No. 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100-461 as amended)).

(6) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(7) Family members of victims of a severe form of trafficking in persons who hold a T-2, T-3, T-4, or T-5 visa, as authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 11-2002(Temp), f. & cert. ef. 10-1-02 thru 12-31-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-120-0125

### Alien Status; Not REF or REFM

(1) For purposes of this chapter of rules, a person is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) In all programs except the Food Stamp program — a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(i) In the Food Stamp program — a non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) A person meets the alien status requirements if he or she is one of the following:

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the TANF program, a person meets the alien status requirements if he or she is one of the following:

(a) A person who is a qualified non-citizen.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(d) A family member of a victim of a severe form of trafficking in persons who holds a T-2, T-3, T-4, or T-5 visa, as authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(4) In the BCCM, MAA, MAF, OHP, OSIPM, and SAC programs, a qualified non-citizen meets the alien status requirements if he or she:

(a) Was a qualified non-citizen before August 22, 1996;

(b) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified-noncitizen status was obtained. A person is not continuously present in the United States if he or she is absent from the United States for more than 30 consecutive days or for a total of more than 90 days; or

(c) Is a person granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a T-2, T-3, T-4, or T-5 visa, as authorized by the



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Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(d) Meets the alien status requirements in section (2), (7), or (8) of this rule.

(e) In the OSIPM program only, is receiving SSI benefits.

(5) In the GA and GAM programs, a person meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a T-2, T-3, T-4, or T-5 visa, as authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(c) A person who meets one of the alien status requirements in section (2) or (7) of this rule.

(6) In the OSIP program, a person meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) A qualified noncitizen who physically entered the United States on or after August 22, 1996, has had the qualified noncitizen status for at least five years, and has forty qualifying quarters of coverage as defined in section (10) of this rule.

(c) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a T-2, T-3, T-4, or T-5 visa, as authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(d) A person receiving SSI benefits.

(e) A person who meets one of the alien status requirements in section (2) or (7) of this rule.

(7) In all programs except TANF, a qualified non-citizen meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. § 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of a person described in subsection (a) or (b) of this section.

(d) In the FS program, a qualified non-citizen who meets the requirement in section (10) of this rule.

(8) Except as provided in sections (2), (4), (5), and (7) of this rule, a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996:

(a) Is ineligible for the BCCM, MAA, MAF, OHP, OSIPM, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(b) Meets the alien status requirement following the five-year period.

(9) In the FS program, a person meets the alien status requirement if he or she is one of the following:

(a) A person granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a T-2, T-3, T-4, or T-5 visa, as authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.

(f) A qualified non-citizen who is disabled, as defined in OAR 461-110-0110(4).

(10) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the FS program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means-tested benefits include FS, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for food stamp benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for food stamp benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

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

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2004(Temp), f. & cert. ef. 4-9-04 thru 6-30-04; SSP 14-2004(Temp), f. & cert. ef. 5-11-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05

# ADMINISTRATIVE RULES

## 461-125-0330

### Blindness as the Basis of Need

In the OSIP and OSIPM programs, a client is considered blind if any of the following is true:

(1) The client is receiving SSB or SSI benefits based on blindness. Eligibility continues as long as eligibility for SSB or SSI eligibility continues.

(2) The client was eligible for and received AB in Oregon in December 1973. These grandfathered clients continue to be eligible as long as they are continuously blind as defined by Oregon requirements that were in effect in 1973.

(3) The client meets one of the following OSIP blindness criteria:

(a) Vision of 20/200 or less in the better eye with a corrective lens.

(b) A limitation in vision field to an angle of 20 degrees or less.

Stat. Auth.: ORS 411.060, 411.070, 411.105, 411.710, 412.025, 412.520, 413.009, 183, 414, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-130-0330

### Disqualifications

(1) In the REF and TANF programs, clients may be disqualified for failure to comply with requirements of employment programs. A disqualification is initiated only after the client has had an opportunity to participate in a conciliation process (see OAR 461-190-0231) that includes a determination by the Department of whether the client had good cause for failing to comply. The effects of a JOBS disqualification are progressive. Except as provided in section (2) of this rule, once a disqualification is imposed, it affects benefits according to the following schedule until the disqualification ends in accordance with OAR 461-130-0335:

(a) There are three levels of disqualification and two months of disqualification for each of the first two levels. Any client who was disqualified for any period of time in the JOBS program prior to July 1, 1996, is treated in this rule as having been disqualified for two months.

(b) At the first level, the penalty each month is a \$50 decrease in the TANF payment standard for the need group.

(c) At the second level, the penalty for the third and fourth months of disqualification is removal of the disqualified client from the need group. If the client who caused the disqualification is not in the need group but remains in the household, the \$50 reduction in the payment standard imposed at step one continues and there is no additional penalty at the second level.

(d) At the third level, the need group receives no cash benefit in the TANF program for the fifth and all subsequent months of disqualification.

(2) Applicants for TANF and participants in the Assessment program who are disqualified for failure to comply with requirements of an employment program are treated the same as recipients under section (1) of this rule, except that those with fewer than two months of disqualification are treated as if they have two previous months of disqualification.

(3) In the Food Stamp program, the effects of disqualifications are progressive. Mandatory clients who fail to meet the requirements of a Food Stamp employment program are removed from the need group until they meet the program requirements and for a minimum of:

(a) For the first failure, one calendar month.

(b) For the second failure, three calendar months.

(c) For the third and subsequent failures, six calendar months.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-135-0400

### Specific Requirements; ERDC

The Department makes payments for child care, including care covered by the ERDC program, subject to the provisions of division 165 of this chapter of rules. To be eligible for ERDC, a filing group must meet the following requirements:

(1) For a filing group to be eligible for the ERDC-BAS program, at least one caretaker (see OAR 461-120-0610) must receive income from employment, including employment through a work study program. For clients who are in the start-up phase of self-employment, working on commission, or participating in job-related training that is a condition of employment, the requirement to have earned income may be waived for three months.

(2) In the ERDC-SBG program:

(a) At least one caretaker must be an undergraduate student without a bachelor's degree. The student must have been admitted to a two- or four-year post-secondary institution that is eligible for federal financial aid and must be registered for at least twelve quarter hours — or an equivalent number of credit hours in an institution that does not use the quarter system — that count toward graduation.

(b) In addition to meeting the requirements of sub-section (a) of this section, a student who applies for the ERDC-SBG program on or after July 1, 2005 must have been admitted to a two- or four-year non-profit, generally accredited institution of higher education located in Oregon, including community colleges, that is eligible for federal financial aid.

(c) A caretaker who meets the requirements of subsection (a) of this section must attend school for at least:

(A) Three out of four school quarters per or two semesters each academic year; or

(B) In an institution that does not use the quarter or semester system, a portion of the academic year equivalent to the portion required by paragraph (A) of this subsection.

(d) A student may use ERDC-SBG benefits for child care needed in order to work during an absence from school or to attend school during a term in which the student is attending school less than 12 credit hours if:

(A) The student intends to attend school at least 12 credit hours the following term; and

(B) The absence or part-time status does not exceed:

(i) One out of four school quarters for students on the quarter system.

(ii) The summer break period for students in the semester system.

(iii) In an institution that does not use the quarter or semester system, a portion of the academic year equivalent to the portion allowed by subparagraph (i) or (ii) of this paragraph.

(e) Students must maintain good standing according to the standards of the institution they are attending.

(f) Students must complete at least 36 quarter hours — or the equivalent in an institution that does not use the quarter system — that count toward graduation each academic year.

(g) Participation in the student child care program is limited to a total of six years.

(3) The family must have an allowable child care need as described in OAR 461-160-0040. If in the filing group there are two adults who are required to be in the filing group, and if one of the adults is unemployed, the unemployed adult is considered available to provide child care, making the group ineligible, except in the following situations:

(a) The unemployed adult is physically or mentally unable to provide adequate child care.

(b) The unemployed adult is unavailable to provide care while participating in requirements of a case plan other than requirements associated with post-secondary education. In the ERDC-SBG program only, the unemployed adult meets the requirements of section (2) of this rule.

(4) The caretaker must use a child care provider who meets the requirements in OAR 461-165-0160 and 461-165-0180.

(5) A client is not eligible for a child care payment in the ERDC program for more than six calendar months if the client is unwilling to obtain for the child a Certificate of Immunization Status.

(6) It is a requirement for eligibility in the ERDC-BAS program that child care is necessary to enable the caretaker to remain employed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-135-0570

### Eligible and Ineligible Students; FS

(1) For the purposes of this rule, higher education includes the following:

(a) Public and private universities and colleges and community colleges that offer degree programs regardless of whether a high school diploma is required for the program. However, GED, ABE, ESL and high school equivalency programs at those institutions are not considered higher education.

(b) Vocational, technical, business, and trade schools that normally require a high school diploma or equivalency certificate for enrollment in the curriculum or in a particular program at the institution. However, pro-

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grams at those institutions that do not require the diploma or certificate are not considered higher education.

(2) A person 18 years of age or older, but under the age of 50 years, who is enrolled at least half time in higher education is ineligible to receive FS benefits, unless any of the following is true:

(a) The student is:

(A) A paid employee working a minimum of 20 hours per week; or

(B) Self-employed for a minimum of 20 hours per week and receives weekly earnings at least equal to the federal minimum wage multiplied by 20 hours.

(b) The student is participating in a state or federally funded work-study program and expects to actually perform work in a work-study job in the current term or semester. The period of eligibility for a student eligible because of this sub-section:

(A) Begins with the month in which school begins or with the month that work study is approved, whichever is later.

(B) Continues for the duration of the term or semester, unless the student refuses a work-study job.

(C) Continues through breaks of less than a month. For breaks of a month or longer, eligibility continues only if the student performs work in a work-study job during the break.

(c) The student is responsible for the care of a child in the filing group, and the child is:

(A) Under six years of age; or

(B) Six years of age or older, but under the age of 12 years, and adequate child care is not available to enable the student to both attend class and meet the employment requirements of sub-section (a) of this section or the work-study requirements of sub-section (b) of this section.

(d) The student is enrolled full time in higher education and is a single parent (meaning there is only one parent in the filing group) or a single adult who has parental control, with the responsibility of caring for a child under 12 years of age.

(e) The student is in a TANF benefit group.

(f) The student is physically or mentally unfit for employment.

(g) The student is in job training classes under the Workforce Investment Act of 1998 (Pub. L. 105-220).

(h) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974, 19 U.S.C. 2296.

(i) The student is enrolled as a result of participation in the higher education component of the JOBS program.

(j) The student is enrolled as a result of employer-sponsored on-the-job training.

(3) A student's enrollment status continues during school vacation and breaks. A student's enrollment status ends when the student graduates, drops out (as verified by their disenrolling), is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

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

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 3-2002(Temp), f. 2-26-02, cert. ef. 3-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-135-1110

### Eligible and Ineligible Students; OHP-OPU

(1) In the OHP-OPU program, a person who is enrolled full time in higher education is ineligible to receive benefits, unless one of the following is true:

(a) The student:

(A) Meets the income requirements for a Pell grant;

(B) Is not currently covered by private major medical health insurance or an HMO; and

(C) Has not been covered by private major medical health insurance or by an HMO for the six months immediately preceding the date of application.

(b) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974 (19 U.S.C. § 2296).

(2) For the purposes of this rule:

(a) *Higher education* includes the following:

(A) Any public or private university, college or community college.

(B) Any post-secondary vocational or technical school that is eligible to accept Pell grants.

(b) *Full time* is defined by the school.

(c) *Meets the income requirements for a Pell grant* means:

(A) The student's Student Aid Report shows an "expected family contribution" less than \$3,851 for the 2004-2005 or 2005-2006 school year; or

(B) The student is eligible for a Pell grant and provides documentation of eligibility from the school's financial aid office.

(3) A student's enrollment status continues during school vacation and breaks. A student's *higher education* status ends when the student graduates, drops out (as verified by their disenrolling), reduces their credit or attendance hours below full-time status, is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 14-2002(Temp), f. & cert. ef. 10-30-02 thru 4-28-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-140-0040

### Determining Availability of Income

This rule describes the date income is considered available, what amount of income is considered available and situations in which income is considered unavailable.

(1) Income is considered available the date it is received or the date a member of the financial group has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:

(a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend.

(b) Earned income withheld or diverted at the request of an employee is considered available on the date the wages would have been paid without the withholding or diversion.

(c) An advance or draw of earned income is considered available on the date it is received.

(d) Income that is averaged, annualized, converted, or prorated is considered available throughout the period for which the calculation applies.

(e) A payment due to a member of the financial group, but paid to a third party for a household expense, is considered available when the third party receives the payment.

(2) The amount of income considered available is the gross before deductions, such as garnishments, taxes, or other payroll deductions. The following income is not considered available:

(a) Wages withheld by an employer in violation of the law.

(b) Income received by another person who does not pay the client his or her share.

(c) Income received by a member of the financial group after he or she has left the household.

(d) Moneys withheld from or returned to the source of the income to repay an overpayment from that source unless the repayment is countable:

(A) In the FS program, under OAR 461-145-0105; or

(B) In the GA, GAM, MAA, MAF, OSIP, OSIPM, or TANF program, under section (4)(b) of this rule.

(e) For a client who is not self-employed, income required to be expended on an ongoing, monthly basis on an expense necessary to produce the income, such as supplies or rental of work space.

(f) In the FS program, income received by the financial group but intended and used for the care of someone not in the financial group as follows:

(A) If the income is intended both for someone in the financial group and someone not in the financial group, the portion of the income intended for the care of the person not in the financial group is considered unavailable.

(B) If the portion intended for the care of the person not in the financial group cannot readily be identified, the income is prorated evenly among the people for whom the income is intended. The prorated share intended for the care of the person not in the financial group is then considered unavailable.

(g) In the FS, MAF, and OHP programs, income controlled by the client's abuser if the client is a victim of domestic violence, the client's abuser controls the income and will not make the money available to the filing group, and the abuser is not in the client's filing group.

(h) In the MAA and TANF programs, the client is a victim of domestic violence and the client's abuser controls the income and will not make the money available to the filing group.

(3) In the OHP program, an expenditure by a business entity that benefits a principal is considered available when the expenditure is made. A



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principal is a person with significant authority in a business entity. This includes a sole proprietor, a self-employed person (see OAR 461-145-0910), a partner in a partnership, a member or manager of a limited liability company, and an officer or principal stockholder of a closely held corporation.

- (4) The following income is considered available even if not received:  
(a) Deemed income.

(b) In the GA, GAM, MAA, MAF, OSIP, OSIPM, QMB, and TANF programs, the portion of a payment from an assistance program, such as public assistance, unemployment compensation, or social security, withheld to repay an overpayment.

Stat. Auth.: ORS 409.050, 411.060 & 411.816

Stats. Implemented: ORS 411.060, 411.117 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 5-2005(Temp), f. & cert. ef. 4-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-145-0365

### National and Community Services Trust Act (NCSTA)

(1) The National and Community Service Trust Act (NCSTA) of 1993 (P.L. 103-82) amended the National and Community Service Act (NCSA) of 1990 (P.L. 101-610) that established a Corporation for National and Community Service. The Corporation administers national service programs providing living allowance, educational award, child care and in-kind benefits.

(2) NCSTA payments are treated as follows:

(a) The living allowance (stipend benefits) is counted or excluded as follows:

(A) In the FS, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, SAC, and TANF programs, it is excluded.

(B) In the ERDC program, it is counted as earned income if it is paid to a caretaker. If it is not, it is excluded.

(b) Educational award and in-kind benefits are treated as follows:

(A) In all programs except GA, these benefits are excluded.

(B) In the GA program, these benefits are treated according to the policy for the specific type of asset.

(c) The child care allowance is treated as follows:

(A) For TANF and ERDC clients eligible for direct provider payment of child care, the allowance is counted as unearned income. The allowance is excluded only if the client already pays the provider. The provider will be paid for only the costs not covered by the allowance.

(B) For FS clients receiving a child care deduction, allow the deduction only for the costs not covered by the allowance.

(C) In the OHP, OSIP, OSIPM, and QMB programs, the allowance is excluded.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060 & 418.100

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-145-0910

### Self-Employment; General

(1) Self-employment income is income resulting from one's own business, trade, or profession, rather than from a specified salary or wage paid by an employer. A client is considered self-employed if he or she meets the criteria in sections (2) and (3) of this rule. If a client has more than one self-employment business, trade, or profession, the income from each is determined separately.

(2) In all programs except FS, a shareholder in a corporation is not self-employed by virtue of the ownership interest in the corporation but only by meeting the requirements of section (3) of this rule. In the FS program, a shareholder in an incorporated business cannot be self-employed in that business.

(3) A person is self-employed for the purposes of this division of rules if he or she meets at least five of the following criteria:

(a) Is engaged in an enterprise for the purpose of producing income.

(b) Is responsible for obtaining or providing a service or product by retaining control over the means and manner of providing the work or services offered.

(c) Has principal responsibility for the success or failure of the business operation by assuming the necessary business expenses and profit or loss risks connected with the operation of the business, and has the authority to hire and fire employees to perform the labor or services.

(d) Is not required to complete an IRS W-4 form for an employer and is not required to have federal income tax or FICA payments withheld from a pay check.

(e) Is not covered under an employer's liability or workers' compensation insurance policy.

(f) Contracts for a site or works out of another's business location.

(4) Notwithstanding sections (2) and (3) of this rule:

(a) Home care providers paid by the Department are not self-employed.

(b) Child care providers paid by the Department, adult foster care providers paid by the Department, realty agents, and clients who sell plasma, redeem beverage containers, pick mushrooms for sale, or engage in similar enterprises are considered to be self-employed.

(c) A newspaper carrier is self-employed if the business through whom the carrier obtains the newspapers treats the carrier as an independent contractor.

(5) In the ERDC, FS, MAA, MAF, REF, and TANF programs, self-employment income, including income from a microenterprise, is counted prospectively to determine eligibility as follows:

(a) Self-employment income is annualized when it is:

(A) Received during less than a 12-month period but is intended as a full year's income.

(B) From a business that has operated for a full year and the previous year is representative of what the income and costs will be during the budget month.

(b) Self-employment income is treated as anticipated income when a financial group begins self-employment and is unable to determine what the income and costs will be during the budget month.

(6) In the GA, OSIP, OSIPM, and QMB programs, self-employment income is considered *available* upon receipt by a member of the financial group, except it is prorated over the period of work if the duration of the work exceeds one month.

Stat. Auth.: ORS 411.060, 411.816 & 418.040

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 5-2005(Temp), f. & cert. ef. 4-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-145-0920

### Self-Employment; Costs That Are Excluded To Determine Countable Income

This rule explains how to determine which costs are excluded from gross self-employment income.

(1) Unless prohibited by section (2) of this rule, and subject to the provisions of sections (3) and (4) of this rule and to OAR 461-145-0930, the necessary costs of producing self-employment income are excluded from gross sales and receipts, including but not limited to:

(a) Labor (wages paid to an employee or work contracted out).

(b) Materials used to make a product.

(c) In the Food Stamp program — principal and interest paid to purchase income-producing property, such as real property, equipment or capital assets. In all other programs, interest paid to purchase income-producing property, such as equipment or capital assets.

(d) Insurance premiums, taxes, assessments, and utilities paid on income-producing property.

(e) Service, repair, and rental of business equipment (including motor vehicles) and property that is owned, leased or rented.

(f) Advertisement and business supplies.

(g) Licenses, permits, legal, or professional fees.

(h) Transportation costs at 20 cents per mile, if the cost is part of the business expense. Commuting expenses to and from the worksite are not part of the business expense.

(i) Charges for telephone service that are a necessary cost for self-employment.

(j) Meals and snacks provided by family day care providers receiving USDA meal reimbursements for children in their care (including their own). The actual cost of the meals is used if the provider can document the cost. If the provider cannot document the actual cost, the following figures are used:

(A) Breakfast — \$.83

(B) Lunch — \$1.51

(C) Dinner — \$1.51

(D) Snacks — \$.45

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(k) Materials purchased for resale, such as Avon products. For newspaper carriers, this includes the cost of newspapers, bags, and rubber bands.

(2) The following costs are not excluded:

(a) Business losses from previous months.

(b) Except in the Food Stamp program, payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods.

(c) Federal, state and local income taxes, draws or salaries paid to any financial group member, money set aside for personal retirement, and other work-related personal expenses (such as transportation, personal business, and entertainment expenses).

(d) Depreciation. Depreciation is a prorated lessening of value assigned to a capital asset based on its useful life expectancy and initial cost.

(e) Costs related to traveling to another area to seek business when there is no reasonable possibility of deriving income from the trip.

(f) Interest or fees on personal credit cards.

(g) Personal telephone charges.

(h) Additionally for MAF and OHP, the costs of real property used as both a home and a business, unless the real property (including utilities) used for business is separate from the dwelling in which the financial group lives.

(i) Shelter or utility costs associated with the client's home, except as authorized by section (3) of this rule.

(3) The exclusions for items used for both business and personal purposes, such as automobiles and real property (including utilities), are limited by the following rules:

(a) In the MAF and OHP programs, the costs of real property (including utilities) are prorated if a separate office or shop is located on the property used as a home. No expense is allowed if the office or shop is part of the dwelling in which the client lives. For other items, the portion of the expense that is for business use only is excluded.

(b) In the ERDC, GA, GAM, OSIP, OSIPM and QMB programs, the portion of the expense that is for business use only is excluded.

(c) In the FS program, costs are excluded for a separate office or shop located on the property used as a home, unless the office or shop is part of the dwelling in which the client lives. Costs for other items used for both business and personal use are excluded.

(4) If no member of the financial group has been self-employed for a sufficiently long period to ascertain the costs of self-employment, the costs may be estimated.

(5) For a client participating in the microenterprise component of the JOBS program, costs are excluded according to general accounting principals, as applied by a certified public accountant, bookkeeping firm, or other entity approved by the Department, and this rule.

Stat. Auth.: ORS 411.060, 411.816 & 418.040

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-150-0055

### Eligibility and Budgeting; OHP

In the OHP program:

(1) The budget month is:

(a) For applicants, the month of application.

(b) For clients reapplying in the last month of their OHP certification period, and for clients moving from GAM, MAA, MAF, OSIPM, REFM, or SAC to OHP, the last month of their current eligibility period.

(c) When a person is added to the filing group, the month the person is added.

(d) For late reapplications, the month the application is received.

(2) Countable income is determined as follows:

(a) Income is considered available during a month in accordance with OAR 461-140-0040.

(b) Income is not annualized, converted, or prorated.

(c) For self-employed clients, countable self-employment income is determined in accordance with OAR 461-145-0920 and 461-145-0930.

(3) The financial group's average countable income is calculated as follows:

(a) The financial group's income from the three months preceding the budget month is added.

(b) The total is divided by three, and the result is the financial group's average countable income assigned to the budget month.

(c) The financial group's average countable income is used to determine eligibility for OHP in accordance with OAR 461-160-0700.

(4) A change in income or resources during a certification period does not affect the eligibility of the benefit group for that certification period.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-150-0090

### Annualizing Contracted and Self-employment Income

(1) Income from self-employment is annualized in accordance with OAR 461-145-0910(5).

(2) In the ERDC, FS, MAA, MAF, REF, and TANF programs, income derived from a contract is annualized if it is received during less than a 12-month period but is intended as a full year's income, except that income derived from a contract and received on an hourly or piecework basis is not annualized.

(3) The following steps are taken to annualize income:

(a) The income from the appropriate 12-month period is divided by 12.

(b) If the business has been in operation for less than a year, the total income is divided by the number of months of operation. The result is the financial group's monthly income from the source.

(4) If past income is not representative of future income, for instance when a substantial increase or decrease is expected in next year's countable self-employment income, income is not annualized. In this case, estimates of next year's anticipated or projected income and costs are used to determine the countable income.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-160-0055

### Medical Costs That are Deductible

For FS clients who are elderly or disabled, and for clients in the GA, GAM, OSIP and OSIPM programs, medical costs are deductible to the extent a deduction is authorized in OAR 461-160-0415 and 461-160-0430 and as follows:

(1) Health and hospitalization insurance premiums and coinsurance are deductible. In the FS and OSIPM programs, health insurance premiums paid less frequently than monthly may be prorated over the period covered by the premium.

(2) The cost of a medical service is deductible if it is:

(a) Provided by, prescribed by, or used under the direction of a licensed medical practitioner; or

(b) Except in the Food Stamp program, a medical necessity approved by the Department.

(3) Medical deductions are also allowed for, among other things, the cost of:

(a) Medical and dental care, including psychotherapy, rehabilitation services, hospitalization, and outpatient treatment.

(b) Prescription drugs and over-the-counter medications prescribed by a licensed practitioner, the annual fee for a drug prescription card, medical supplies and equipment, dentures, hearing aids, prostheses, and prescribed eyeglasses.

(c) In the FS program, such items as the following:

(A) Nursing care, nursing home care, and hospitalization, including payments for a person who was a member of the household group immediately prior to entering a hospital or a nursing home certified by the state.

(B) Services of an attendant, home health aid, housekeeper or provider of dependent care necessary due to the client's age or illness, including an amount equal to a one-person FS benefit group if the client furnishes the majority of an attendant's meals.

(C) Prescribed, certified assistance animals (such as a Seeing Eye Dog, Hearing Dog, or Housekeeper Monkey) and companion animals, including the cost of acquiring the animal, their training, food, and veterinarian bills.

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(D) Reasonable costs for transportation and lodging needed to obtain medical treatment or services.

(E) Installment plan arrangements made before a bill becomes past due. The expense is not deducted if the client defaults and makes a second agreement.

(F) The actual, pre-discounted expense of a prescription purchased with a Medicare-approved drug discount card.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-160-0620

### Income Deductions and Client Liability; Long-Term Care or Waivered Services

(1) Deductions from income in the OSIP and OSIPM programs are made for clients specified in subsection (a) as explained in subsections (a) through (i) of this rule. The client's liability is determined according to subsection (j).

(a) Deductions are made in the order below for clients who do not receive SSI and who:

(A) Reside in or are entering a long-term care facility; or

(B) Receive Title XIX waived services.

(b) One standard earned income deduction of \$65 is made from the earned income in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs. The deduction is \$85 in the OSIP-AB and OSIPM-AB programs.

(c) In the OSIP and OSIPM programs, the deductions under the plan for self-support is made as allowed by OAR 461-140-0420.

(d) One of the following need standards is deducted:

(A) A \$30 personal needs allowance for clients in long-term care.

(B) A \$90 personal needs allowance for clients in long-term care who are eligible for VA benefits based on unusual medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(C) The OSIP maintenance standard for clients who receive waived services.

(e) A community spouse monthly income allowance is deducted from the institutionalized spouse's income if the income is made available to (or for the benefit of) the community spouse. The amount of the allowance is determined in accordance with this section.

(A) If neither spouse is eligible for SSI and both receive waived services through the home- and community-based care program in the same residence or facility, and if either spouse's countable income is less than the one-person OSIPM payment standard, an allowance is calculated separately using calculation methods 1 and 2 below. The result that is better for the couple is the allowance. For all other couples, the amount calculated using method 2 is the allowance.

(B) Calculation method 1: The allowance is the difference between the one-person payment standard of the OSIPM program (see OAR 461-155-0250) and the countable income of the spouse with the lesser countable income.

(C) Calculation method 2:

(i) Step 1 — Determine the maintenance needs allowance. \$1,604 is added to the amount over \$481 that is needed to pay monthly shelter expenses for the couple's principal residence. The sum or \$2,377.50, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the Food Stamp program (see OAR 461-160-0420).

(ii) Step 2 — Compare maintenance needs allowance with community spouse's gross income. The community spouse's gross income is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(iii) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(f) A dependent income allowance is deducted for each eligible dependent as follows:

(A) For a case with a community spouse, a deduction is permitted only if the eligible dependent's monthly income is below \$1,604. To determine the eligible dependent's income allowance:

(i) The eligible dependent's monthly income is deducted from \$1,604.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the eligible dependent's income allowance.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the dependent's income.

(g) Costs for maintaining a home are deducted if the client meets the criteria in OAR 461-160-0630.

(h) In the OSIPM program, medical deductions allowed by OAR 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(i) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(j) The client liability is determined as follows:

(A) For waived clients (except in OSIPM-IC), the liability is the waived service cost or the client's adjusted income, whichever is less. This amount must be paid to the Department each month as a condition of receiving waived services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For long-term care clients, the liability is the cost of care or the adjusted income, whichever is less.

(2) The deduction used to determine adjusted income for GA and GAM clients in long-term care or waived services is as follows:

(a) One standard earned income deduction of \$65 is made from the earned income for clients who are not blind; or

(b) One standard earned income deduction of \$85 for clients who are blind.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-170-0025

### Changes That Must be Reported; EXT

Clients in the EXT program are required to report the following within 10 days of occurrence:

(1) A change in address of anyone who is receiving benefits.

(2) A change of name of anyone who is receiving benefits.

(3) A change in health-insurance coverage available to anyone who is receiving benefits.

(4) A report of pregnancy of anyone who is receiving benefits.

(5) A birth to anyone who is receiving benefits.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 7-2005, f. & cert. ef. 7-1-05

## 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);



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(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 is provided written notification at the time of application or redetermination 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 at the same time 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; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-180-0090

### Effective Dates; Initial Month Medical Benefits

The effective date for starting medical benefits for an eligible client is as follows:

(1) In the GAM, MAA, MAF, OHP, OSIPM, QMB-DW, REFM, and SAC programs:

(a) Except as provided for in sub-section (b) of this section:

(A) If the client meets all eligibility requirements on the date of request, it is the date of request.

(B) If the client does not meet all eligibility requirements on the date of request, it is the first day following that date that all eligibility requirements are met.

(b) If the client does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new date of request.

(2) In the EXT program, it is the first of the month following the month that MAA or MAF program benefits end.

(3) In the QMB-BAS program, it is the first of the month after the benefit group has been determined to meet all QMB-BAS eligibility criteria and the Department receives the required verification.

(4) In the QMB-SMB program, it is the first of the month in which the benefit group meets all QMB-SMB eligibility criteria and the Department receives the required verification.

(5) Retroactive eligibility is authorized under certain circumstances in some medical programs, (see OAR 461-135-0875 and 461-180-0140).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-180-0130

### Effective Dates; Restored Benefits

(1) The effective date for restoring benefits that were underpaid (including erroneous collections of overpayments) or denied or closed in error is one of the following:

(a) In all programs except FS, for underpayments resulting from administrative error, the effective date is the date the error was made, subject to the following conditions:

(A) In all programs except TANF, benefits can be restored only for the preceding 12 months.

(B) In the TANF program, benefits may be restored as far back as October 1, 1981.

(b) In all programs except FS, for underpayments resulting from client error, the effective date is the earliest of the following:

(A) The month the benefit group notifies the branch office of the possible loss.

(B) The month the branch office discovers the loss.

(C) The date a hearing is requested.

(c) In the FS program, for underpayments resulting from administrative error, the effective date is the earliest of the following, except that benefits can be restored only for the preceding 12 months:

(A) The date the benefit group notifies the branch office of the possible loss.

(B) The date the branch office discovers the loss.

(C) The date a hearing is requested.

(d) In the FS program, benefits are not restored for underpayments resulting from client error.

(2) The effective date for restoring benefits that have been suspended is:

(a) The first of the month after the suspension, if suspension was for only one month; or

(b) The date the benefit group again becomes eligible, if benefits have been suspended for more than 30 days. Treat the month in which benefits are restored as an initial month.

Stat. Auth.: ORS 183, 411.060, 411.070, 411.105, 411.111, 411.300, 411.632, 411.700, 411.710, 412.025, 412.520, 413.009, 414.032, 416 & 418

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-190-0197

### Microenterprise Component

(1) A microenterprise is a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000. The microenterprise component is a component in which a self-employed TANF client (see OAR 461-145-0910(2) for definition of "self-employed client") can meet participation requirements of the JOBS program by working in a microenterprise.

(2) The Department will authorize a client to participate in the microenterprise component if the client is self-employed in a microenterprise and provides the Department with:

(a) A business plan for the microenterprise; and

(b) Approval of the business plan by an expert third party entity such as the United States Small Business Administration, a member program of the Oregon Microenterprise Network, the Service Corps of Retired Executives (SCORE), or an entity approved by the Department.

(3) The business plan required by section (2) of this rule must include provisions for review of the client's progress in the microenterprise by the approving entity.

(4) The Department may require a client to participate in other JOBS activities while participating in the microenterprise component. A client participating in the microenterprise component must:

(a) Participate in the microenterprise component for the number of hours required by the rules of the JOBS program; or

(b) Participate in the microenterprise component and other JOBS activities identified in the case plan for the number of hours required by the case plan.

(5) A client participating in the microenterprise component must provide semiannually to the Department a statement of the client's income prepared by a certified public accountant, bookkeeping firm, or other entity approved by the Department according to generally accepted accounting principles and OAR 461-145-0920.

(6) The Department will not authorize JOBS funds to be used for equipment, supplies, wages, or other business expenses that support the microenterprise.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060 & 418.100

Hist.: SSP 23-2003, f. & cert. ef. 10-1-03; SSP 7-2005, f. & cert. ef. 7-1-05

## 461-190-0406

### Eligibility of Clients

(1) Any client not excluded from participation by law, if eligible for the TANF program, may volunteer to participate in the *JOBS Plus program*. If there are no volunteers available to participate, the Department may select participants from among eligible clients. Recipients of SSI and teenage parents who remain in high school, if they are making progress toward receiving a diploma, are exempt from participation in the *JOBS Plus program*.

(2) Clients remain eligible to participate as long as they would, except for participating in the *JOBS Plus program*, be eligible for TANF. Eligibility of a participant working under a *JOBS Plus assignment* is not affected by changes in deprivation (see OAR 461-125-0010).

(3) The benefits of participants remain suspended until the first day of the month following the month in which they last perform work under a

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*JOBS Plus* agreement. TANF clients cannot receive TANF cash benefits and a *JOBS Plus* supplement for the same month.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 18-1998, f. & cert. ef. 10-2-98; SSP 7-2005, f. & cert. ef. 7-1-05

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**Adm. Order No.:** SSP 8-2005(Temp)

**Filed with Sec. of State:** 7-1-2005

**Certified to be Effective:** 7-1-05 thru 10-1-05

**Notice Publication Date:**

**Rules Adopted:** 461-135-1185, 461-135-1186, 461-135-1187

**Rules Amended:** 461-160-0610, 461-160-0620, 461-185-0050

**Subject:** Rule 461-135-1185 is being adopted to provide a definition for the Low-Income Subsidy (LIS) program.

Rule 461-135-1186 is being adopted to set out the requirements for a completed Low-Income Subsidy (LIS) application.

Rule 461-135-1187 is being adopted to adopt and incorporate the federal regulations that apply to Low-Income Subsidy (LIS) applications, eligibility determinations, and redeterminations. This rule sets out how the Department will handle applicants with pending LIS applications with other agencies. It sets a time frame for providing a decision notice to an applicant. It sets out the appeal process for adverse decision notices.

Rules 461-160-0610, 461-160-0620, and 461-185-0050 are being amended to correctly reflect the disregard of those who are identified as Disabled Adult Children under Section 6 of P.L. 99-643. Prior to this revision, these rules required those receiving Home and Community Based Services under an approved Waiver Program to pay a pre-determined amount toward the cost of those services, contrary to federal law.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-135-1185

### Low-Income Subsidy Program

(1) The Low-Income Subsidy program (LIS) is a federal assistance program for Medicare clients who need extra help meeting their Medicare Part D prescription drug costs. LIS helps Medicare clients pay their monthly premium, deductible, and co-insurance costs under Part D. LIS is a means-tested program. All clients must qualify on the basis of household income, resources, and size as defined by the Social Security Administration.

(2) LIS is not a part of the Senior Prescription Drug Assistance Program (OAR 461-135-1180, Division 410-149 and ORS 414.340 to 414.348).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05

## 461-135-1186

### LIS Applications

An LIS application is complete if all of the following requirements are satisfied:

(1) The applicant satisfies the provisions of OAR 461-115-0050 and completes the Department's forms SDS 0539A (1/05) and SDS 0539S (6/05) or their successors.

(2) The applicant must submit:

(a) A certification by the applicant or personal representative, under penalty of perjury or sanction for false statement, as to the accuracy of information provided on the application form (see 42 CFR 423.904(d)(2));

(b) All required statements from financial institutions (see 42 CFR 423.904(d)(3)); and

(c) All information for verification (see 42 CFR 423.904(d)(3)) required under OAR 461-115-0610.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05

## 461-135-1187

### Eligibility Determinations and Due Process for LIS

(1) The regulations set out at 42 CFR 423.771 to 423.774 are expressly adopted and incorporated by reference for LIS. These regulations apply to the application process, eligibility determinations, and redeterminations.

(2) The Department will send to LIS applicants a decision notice consistent with the provisions of OAR 461-175-0200 within 45 days after the Department receives a completed application.

(3) An applicant may appeal an adverse decision notice under the provisions of Division 461-025 of the Oregon Administrative Rules.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05

## 461-160-0610

### Client Liability for Clients in Long-term Care or Receiving Waivered Services; OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD)

Clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who live in or entering a long-term care setting or who receive Title XIX waived services must, in order to remain eligible, make the payment required by this rule.

(1) Clients who do not receive SSI, but whose countable income is under the countable income limit, may be eligible for OSIP and OSIPM. These clients must apply their adjusted income to the cost of their care or service. This is their client liability. If their adjusted income exceeds their cost of care or service, they must pay the full cost of care but have no additional liability.

(2) Clients who receive SSI, or are deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)), are eligible for OSIP and OSIPM without having to make a payment.

(3) Adult disabled children as described at OAR 461-135-0830 are eligible for OSIP and OSIPM without having to make a payment.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05

## 461-160-0620

### Income Deductions and Client Liability; Long-Term Care or Waivered Services

(1) Deductions from income in the OSIP and OSIPM programs are made for clients specified in subsection (a) as explained in subsections (a) through (i) of this rule. The client's liability is determined according to subsection (j).

(a) Deductions are made in the order below for clients who do not receive SSI and who:

(A) Reside in or are entering a long-term care facility; or

(B) Receive Title XIX waived services.

(b) One standard earned income deduction of \$65 is made from the earned income in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs. The deduction is \$85 in the OSIP-AB and OSIPM-AB programs.

(c) In the OSIP and OSIPM programs, the deductions under the plan for self-support is made as allowed by OAR 461-140-0420.

(d) One of the following need standards is deducted:

(A) A \$30 personal needs allowance for clients in long-term care.

(B) A \$90 personal needs allowance for clients in long-term care who are eligible for VA benefits based on unusual medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(C) The OSIP maintenance standard for clients who receive waived services.

(e) A community spouse monthly income allowance is deducted from the institutionalized spouse's income if the income is made available to (or for the benefit of) the community spouse. The amount of the allowance is determined in accordance with this section.

(A) If neither spouse is eligible for SSI and both receive waived services through the home- and community-based care program in the same residence or facility, and if either spouse's countable income is less than the one-person OSIPM payment standard, an allowance is calculated separately using calculation methods 1 and 2 below. The result that is better for the couple is the allowance. For all other couples, the amount calculated using method 2 is the allowance.

(B) Calculation method 1: The allowance is the difference between the one-person payment standard of the OSIPM program (see OAR 461-155-0250) and the countable income of the spouse with the lesser countable income.

(C) Calculation method 2:

(i) Step 1 — Determine the maintenance needs allowance. \$1,604 is added to the amount over \$481 that is needed to pay monthly shelter expenses for the couple's principal residence. The sum or \$2,377.50, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for

# ADMINISTRATIVE RULES

a condominium or cooperative, and the full standard utility allowance for the Food Stamp program (see OAR 461-160-0420).

(ii) Step 2 — Compare maintenance needs allowance with community spouse's gross income. The community spouse's gross income is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(iii) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(f) A dependent income allowance is deducted for each eligible dependent as follows:

(A) For a case with a community spouse, a deduction is permitted only if the eligible dependent's monthly income is below \$1,604. To determine the eligible dependent's income allowance:

(i) The eligible dependent's monthly income is deducted from \$1,604.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the eligible dependent's income allowance.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the dependent's income.

(g) Costs for maintaining a home are deducted if the client meets the criteria in OAR 461-160-0630.

(h) In the OSIPM program, medical deductions allowed by OAR 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(i) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(j) There is no client liability for adult disabled children as described at OAR 461-135-0830. The client liability for other clients is determined as follows:

(A) For waived clients (except in OSIPM-IC), the liability is the waived service cost or the client's adjusted income, whichever is less. This amount must be paid to the Department each month as a condition of receiving waived services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For long-term care clients, the liability is the cost of care or the adjusted income, whichever is less.

(2) The deduction used to determine adjusted income for GA and GAM clients in long-term care or waived services is as follows:

(a) One standard earned income deduction of \$65 is made from the earned income for clients who are not blind; or

(b) One standard earned income deduction of \$85 for clients who are blind.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05

## 461-185-0050

### Client Pay-In System

(1) Clients who receive waived in-home services (except clients in the OSIP-IC or OSIPM-IC program and adult disabled children as described at OAR 461-135-0830) and have countable income above the payment standard for the number in the benefit group must pay to the Department the lesser of the following as a condition of receiving waived in-home services:

(a) The difference between their adjusted income and the payment standard for the number in the benefit group; OR

(b) The actual cost of the waived service.

(2) The Department will administer the pay-in system as follows:

(a) Each month, the Department will send the client an invoice requesting payment based on the calculation in section (1) of this rule.

(b) If the Department does not receive the payment by the 15th of the current month, these notices will be automatically generated:

(A) A notice advising the client that services will end at the end of the month and giving information on other Medicaid programs; AND

(B) A notice to the service provider that the Department will not reimburse them for services provided past the end of the current month.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05

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**Adm. Order No.:** SSP 9-2005(Temp)

**Filed with Sec. of State:** 7-6-2005

**Certified to be Effective:** 7-6-05 thru 10-1-05

**Notice Publication Date:**

**Rules Amended:** 461-160-0610, 461-160-0620

**Rules Suspended:** 461-160-0610(T), 461-160-0620(T)

**Subject:** Rules 461-160-0610 and 461-160-0620 are being further amended to correctly reflect the disregard of those who are identified as Disabled Adult Children under Section 6 of P.L. 99-643. Prior to a July 1 temporary rule, these rules required clients receiving Home and Community Based Services under an approved Waiver Program to pay a pre-determined amount toward the cost of those services, contrary to federal law. This amendment clarifies that a client in a nursing facility, state institution, or an Intermediate Care Facility for the Mentally Retarded continues to pay toward the cost of the services under the temporary rule. This change is effective as of July 1.

**Rules Coordinator:** Annette Tesch—(503) 378-3298

## 461-160-0610

### Client Liability for Clients in Long-term Care or Receiving Waivered Services; OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD)

Clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who live in or entering a long-term care setting or who receive Title XIX waived services must, in order to remain eligible, make the payment required by this rule.

(1) Clients who do not receive SSI, but whose countable income is under the countable income limit, may be eligible for OSIP and OSIPM. These clients must apply their adjusted income to the cost of their care or service. This is their client liability. If their adjusted income exceeds their cost of care or service, they must pay the full cost of care but have no additional liability.

(2) Clients who receive SSI, or are deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)), are eligible for OSIP and OSIPM without having to make a payment.

(3) An adult disabled child as described at OAR 461-135-0830 is eligible for OSIP and OSIPM. An adult disabled child is subject to or exempt from payments as follows:

(a) An adult disabled child living in a nursing facility, state institution, or an Intermediate Care Facility for the Mentally Retarded makes the payments required by this rule.

(b) An adult disabled child in a waived living arrangement is exempt from payments under this rule.

(4) This temporary rule has a retroactive effective date of July 1, 2005.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05

## 461-160-0620

### Income Deductions and Client Liability; Long-Term Care or Waivered Services

(1) Deductions from income in the OSIP and OSIPM programs are made for clients specified in subsection (a) as explained in subsections (a) through (i) of this rule. The client's liability is determined according to subsection (j).

(a) Deductions are made in the order below for clients who do not receive SSI and who:

(A) Reside in or are entering a long-term care facility; or

(B) Receive Title XIX waived services.



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(b) One standard earned income deduction of \$65 is made from the earned income in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs. The deduction is \$85 in the OSIP-AB and OSIPM-AB programs.

(c) In the OSIP and OSIPM programs, the deductions under the plan for self-support is made as allowed by OAR 461-140-0420.

(d) One of the following need standards is deducted:

(A) A \$30 personal needs allowance for clients in long-term care.

(B) A \$90 personal needs allowance for clients in long-term care who are eligible for VA benefits based on unusual medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(C) The OSIP maintenance standard for clients who receive waived services.

(e) A community spouse monthly income allowance is deducted from the institutionalized spouse's income if the income is made available to (or for the benefit of) the community spouse. The amount of the allowance is determined in accordance with this section.

(A) If neither spouse is eligible for SSI and both receive waived services through the home- and community-based care program in the same residence or facility, and if either spouse's countable income is less than the one-person OSIPM payment standard, an allowance is calculated separately using calculation methods 1 and 2 below. The result that is better for the couple is the allowance. For all other couples, the amount calculated using method 2 is the allowance.

(B) Calculation method 1: The allowance is the difference between the one-person payment standard of the OSIPM program (see OAR 461-155-0250) and the countable income of the spouse with the lesser countable income.

(C) Calculation method 2:

(i) Step 1 — Determine the maintenance needs allowance. \$1,604 is added to the amount over \$481 that is needed to pay monthly shelter expenses for the couple's principal residence. The sum or \$2,377.50, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the Food Stamp program (see OAR 461-160-0420).

(ii) Step 2 — Compare maintenance needs allowance with community spouse's gross income. The community spouse's gross income is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(iii) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(f) A dependent income allowance is deducted for each eligible dependent as follows:

(A) For a case with a community spouse, a deduction is permitted only if the eligible dependent's monthly income is below \$1,604. To determine the eligible dependent's income allowance:

(i) The eligible dependent's monthly income is deducted from \$1,604.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the eligible dependent's income allowance.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the dependent's income.

(g) Costs for maintaining a home are deducted if the client meets the criteria in OAR 461-160-0630.

(h) In the OSIPM program, medical deductions allowed by OAR 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(i) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(j) The client liability is determined as follows:

(A) For clients receiving waived services (except in OSIPM-IC), the liability is the waived service cost or the adjusted income of the client, whichever is less. This amount must be paid to the Department each month as a condition of receiving waived services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit. However, there is no client liability for waived services for adult disabled children as described at OAR 461-135-0830.

(B) For long-term care clients, the liability is the cost of care or the adjusted income, whichever is less. For adult disabled children in long-term care, the liability is described at OAR 461-160-0610.

(2) The deduction used to determine adjusted income for GA and GAM clients in long-term care or waived services is as follows:

(a) One standard earned income deduction of \$65 is made from the earned income for clients who are not blind; or

(b) One standard earned income deduction of \$85 for clients who are blind.

(3) This temporary rule has a retroactive effective date of July 1, 2005.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05

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

**Adm. Order No.:** SPD 8-2005

**Filed with Sec. of State:** 6-23-2005

**Certified to be Effective:** 6-23-05

**Notice Publication Date:** 6-1-05

**Rules Amended:** 411-340-0010, 411-340-0020, 411-340-0030, 411-340-0040, 411-340-0050, 411-340-0060, 411-340-0080, 411-340-0090, 411-340-0110, 411-340-0120, 411-340-0130, 411-340-0140, 411-340-0150, 411-340-0160, 411-340-0170

**Subject:** Chapter 411, Division 340, Support Services for Adults with Developmental Disabilities has been permanently amended, effective 07/01/2005. This amendment allows for the following changes:

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

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

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

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

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

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

**Rules Coordinator:** Lynda Dyer—(503) 945-6398

### 411-340-0010

#### Statement of Purpose and Statutory Authority

Purpose. These rules prescribe standards, responsibilities, and procedures for Support Service Brokerages, for purchase of individual supports with support service funds, and for providers paid with support services funds to provide services to adults with developmental disabilities so that those adults may live in their own homes or in family homes. Services provided under this rule are intended to identify, strengthen, expand and, where

# ADMINISTRATIVE RULES

required, supplement private, public, formal and informal support available to these adults so that they may exercise self-determination in the design and direction of their lives.

Stat. Auth.: ORS 409.050 & 410.070

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1750, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05

## 411-340-0020

### Definitions

As used in OAR 411-340-0010 through 411-340-0180:

(1) "Abuse" means:

(a) Except for Provider Organizations listed in OAR 411-340-0020(1)(b), one or more of the following:

(A) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(B) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(C) Willful infliction of physical pain or injury;

(D) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program and an adult; or

(E) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being.

(b) Activities described in OAR 411-320-0020(2)(b) through (c)(F) for Provider Organizations qualifying to be paid with support services funds as:

(A) 24-Hour Residential Programs licensed under OAR chapter 411, division 325;

(B) Adult Foster Homes licensed under OAR chapter 411, division 360.

(C) Employment and Alternative to Employment programs certified under OAR chapter 411, division 345; or

(D) Supported Living Services certified under OAR 309-041-0550 through 309-041-0830.

(2) "Abuse investigation and protective services" means reporting and investigation activities as required by OAR 410-009-0100 and any subsequent services or supports necessary to prevent further abuse.

(3) "Activities of Daily Living" (ADL) means those self-care activities that must be accomplished by an individual for continued well-being including mobility, dressing and grooming, bathing and personal hygiene, toileting, bowel and bladder care and eating.

(4) "Administration of medication" means the act of a person responsible for the individual's care and employed by or under contract to the individual, the individual's legal representative, or a provider organization, of placing a medication in, or on, an individual's body.

(5) "Administrator" means the Assistant Director, Department of Human Services, and Administrator of Seniors and People with Disabilities or that person's designee.

(6) "Adult" means an individual 18 years or older with developmental disabilities.

(7) "Basic Benefit" means the type and amount of Support Services available to each eligible individual, specifically:

(a) Access to Support Service Brokerage services listed in OAR 411-340-0120(1)(a) through (g) and, if required,

(b) Assistance with purchase of supports listed in OAR 411-340-0130(6)(a) through (p) with no more than:

(A) \$9600 per Plan Year from July 1, 2001 through June 30, 2003, and thereafter an amount assigned and published by the Department, when an individual is a Medicaid recipient and is eligible for, and has chosen to receive, services available through the Support Services waiver; and

(B) An amount equal to the state's General Fund contribution to the maximum amount available per Plan Year to a Medicaid recipient per OAR 411-340-0020(6)(b)(A) from July 1, 2001 through June 30, 2003, and thereafter an amount assigned and published by the Department, when an individual is either not eligible for Medicaid or Medicaid waiver services or does not otherwise receive Medicaid benefits.

(8) "Basic Supplement" means the amount of support services funds in excess of the Basic Benefit to which an individual may have access in order to purchase necessary supports based on demonstration of extraordinary long-term need on the Basic Supplement Criteria Inventory, Form DHS 0203. A Basic Supplement is subject to limitations outlined in OAR 411-340-0130(4)(a)(A) and (B).

(9) "Basic Supplement Criteria Inventory" means Form DHS 0203, the written inventory of an individual's circumstances, which is completed

and scored by the Brokerage to determine whether the individual is eligible for annual support service funds in excess of the Basic Benefit due to extraordinary long-term need.

(10) "Certificate" means a document issued by the Department to a Support Services Brokerage or to a Provider Organization that certifies the Brokerage or Provider Organization is eligible to receive State funds for these services.

(11) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to: the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication method.

(12) "Chore services" mean services needed to maintain a clean, sanitary and safe environment in an individual's home. This service includes heavy household chores such as washing floors, windows and walls, tacking down loose rugs and tiles, moving heavy items of furniture for safe access and egress. These services are provided when no one in the household is capable of either performing, or paying for, the services and when no other relative, caregiver, landlord, community or volunteer agency, or third-party payer is capable of or responsible for their provision.

(13) "Client Process Monitoring System" or "CPMS" means the Department's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(14) "Community Inclusion Supports" means services that may include instruction in skills an individual wishes to acquire, retain or improve that enhance independence, productivity, integration, or maintain the individual's physical and mental skills. These supports are provided:

(a) For an individual to participate in activities to facilitate independence and promote community inclusion and contribution; and

(b) At any time in community settings of the individual's choice.

(15) "Community Living Supports" means services provided for the purpose of facilitating independence and promoting community integration by supporting the individual to gain or maintain skills to live as independently as possible in the type of community-based housing the individual chooses, consistent with the outcome for community living defined in the Individual's Support Plan. The type, frequency, and duration of direct support and other community living support is defined in the plan of care based on the individual's selected housing arrangement and assessed needs. Supports are available to individuals who live alone, with roommates, or with family. The services include support designed to develop or maintain skills required for self-care, directing supports, and caring for the immediate environment such as:

(a) Personal skills, including eating, bathing, dressing, personal hygiene, and mobility;

(b) Socialization, including development or maintenance of self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(c) Community participation, recreation or leisure, including the development or maintenance of skills to use generic community services, facilities, or businesses;

(d) Communication, including development or maintenance of expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills; and

(e) Personal environmental skills including planning and preparing meals, budgeting, laundry, and housecleaning.

(16) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(17) "Comprehensive Services" means a package of developmental disability services and supports that includes one of the following living arrangements regulated by the Department alone or in combination with any associated employment or community inclusion program regulated by the Department:

(a) 24-hour residential services including, but not limited to, care provided in a group home, in a foster home, or through a supported living program; or

(b) Supports provided to an individual in the individual or family home that cost more than \$20,000 in funds designated by the Department specifically for that purpose for individuals with developmental disabilities per Plan Year for the July 1, 2001 through June 30, 2003 biennium or more than \$20,000 plus any legislatively-approved cost-of-living increments per Plan Year for each biennium thereafter.

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(18) "Department" means the Oregon Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(19) "Developmental Disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society; or

(d) Results in significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(20) "Emergent status" means a temporary, unpredictable situation when an individual enrolled in a Support Service Brokerage may be allowed to receive Department-paid support exceeding \$20,000 per year to remain in his or her home or family home or to enter a short-term out-of-home residential placement without exiting Support Services. An individual will only be considered in emergent status if he or she is in jeopardy of losing his or her living situation due to inability or unavailability of the primary caregiver, when no alternative resources are available, and when the CDDP of the individual's county of residence has determined that the individual meets criteria for crisis or diversion services according to OAR 411-320-0160. Services are provided while an individual is in emergent status to prevent the individual's civil court commitment under ORS Chapter 427 and there is imminent risk of loss of the individual's community support system. Services to maintain the individual in the community and stabilize the situation are crisis/diversion services according to OAR 411-320-1060 that may include short-term residential placement services indicated in the individual's Support Service Brokerage Plan of Care Crisis Addendum, as well as additional support in the individual's home as described in the Support Services Individual Support Plan. Length of emergent status may be authorized only by the CDDP of the individual's county of residence, or the Regional Crisis Program responsible for the individual's county of residence, depending on the source of the crisis/diversion funds. In no case will emergent status for an individual exceed two hundred seventy (270) consecutive days in twelve (12) consecutive months.

(21) "Employer-related supports" means activities that assist individuals and, when applicable, their family members, with directing and supervising provision of services described in the Individual Support Plan. Supports to the employer include, but are not limited to: education about employer responsibilities; orientation to basic wage and hour issues; use of common employer-related tools such as job descriptions; and fiscal intermediary services.

(22) "Entry" means admission to a Department-funded developmental disability service provider.

(23) "Environmental Accessibility Adaptations" means physical adaptations that are necessary to ensure the health, welfare, and safety of the individual in the home, or that enable the individual to function with greater independence in the home.

(a) Examples of these services include, but are not limited to: environmental modification consultation to determine the appropriate type of adaptation; installation of shatter-proof windows; hardening of walls or doors; specialized, hardened, waterproof or padded flooring; an alarm system for doors or windows; protective covering for smoke detectors, light fixtures, and appliances; sound and visual monitoring systems; fencing; installation of ramps and grab-bars, installation of electric door openers; adaptation of kitchen cabinets and sinks; widening of doorways; handrails; modification of bathroom facilities; individual room air conditioners for individuals whose temperature sensitivity issues create behaviors or medical conditions that put themselves or others at risk; installation of non-skid surfaces; overhead track systems to assist with lifting or transferring; specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; modifications to a vehicle to meet the unique needs of the individ-

ual (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle).

(b) Examples of what these services do not include:

(A) Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair and central air conditioning; and

(B) Adaptations that add to the total square footage of the home.

(24) "Environmental Modification Consultant" means either an Independent Provider or a Provider Organization paid with support services funds to provide advice to an individual, the individual's legal representative, or the individual's Personal Agent about the environmental accessibility adaptation required to meet the individual's needs.

(25) "Exit" means either termination from a Department-funded program or transfer from one Department-funded program to another. Exit does not mean transfer within a service provider's program.

(26) "Family," for determining individual eligibility for Support Services Brokerage services as a resident in the family home and for determining who may receive family training, means a unit of two or more persons that includes at least one person with developmental disabilities where the primary caregiver(s) is (are):

(a) Related to the individual with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with disabilities related to one of the partners by blood, marriage, or legal adoption.

(27) "Family Training" means training and counseling services for the family of an individual to increase capabilities to care for, support and maintain the individual in the home. This service includes: instruction about treatment regimens and use of equipment specified in the Individual Support Plan; information, education and training about the individual's disability, medical, and behavioral conditions; and counseling for the family to relieve the stress associated with caring for an individual with disabilities. This service is provided by licensed psychologists, professionals licensed to practice medicine, social workers, counselors, or in organized conferences and workshops that are limited to topics related to the individual's disability, identified support needs, or specialized medical or habilitative support needs. The training is not provided to paid caregivers.

(28) "Fiscal Intermediary" means a person or agency that receives and distributes Support Services funds on behalf of an individual according to an Individual Support Plan. The fiscal intermediary responsibilities may include activities and records related to payroll and payment of employer-related taxes and fees as an agent of individuals who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.

(29) "General business provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with Support Service funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(30) "Grievance" means a formal complaint by an individual, individual's legal representative, or a person acting on his or her behalf about services or employees of a Support Service Brokerage or Provider Organization.

(31) "Habitat services" mean services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. These services include supported employment, community living supports, and community inclusion supports.

(32) "Home" means an individual's primary residence that is not licensed, certified by, and under contract with, the Department of Human Services as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(33) "Homemaker services" means support consisting of general household activities such as meal preparation and routine household care provided by a trained homemaker. The services are provided when the per-



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son regularly responsible for these activities as well as caring for an individual in the home is temporarily absent, temporarily unable to manage the home as well as care for self or the individual in the home, or needs to devote additional time to caring for the individual.

(34) "Incident report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(35) "Independence" is defined in ORS 427.005 and means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(36) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with Support Service funds who personally provides services to the individual.

(37) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

(38) "Individual Support Plan" or "ISP" means the written details of the supports, activities, costs, and resources required for an individual to achieve personal goals. This ISP is developed by the individual, the individual's personal agent, the individual's legal representative (if any), and other persons who have been invited to participate by the individual or individual's legal representative. The ISP articulates decisions and agreements made through a person-centered process of planning and information-gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(39) "Integration" is defined in ORS 427.005 and means use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community.

(40) "Legal Representative" means an attorney at law who has been retained by or for the adult, or a person or agency authorized by the court to make decisions about services for the individual.

(41) "Local Mental Health Authority" or "LMHA" means the county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health and developmental disability program, the board of directors of a public or private corporation.

(42) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(43) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(44) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(45) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs will be met. It includes which tasks will be taught, assigned or delegated to the qualified provider or family.

(46) "Occupational Therapy" means the services of a professional licensed under ORS 675.240 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(47) "Personal Agent" means a person who works directly with individuals and families to provide or arrange for the services listed in OAR 411-340-0120(1), who meets the requirements of OAR 411-340-0150(4) and who is:

(a) A trained employee of a Support Service Brokerage; or

(b) A person who has been engaged under contract to the Brokerage to allow the Brokerage to meet responsibilities in geographic areas where Personal Agent resources are severely limited.

(48) "Personal Emergency Response Systems" means electronic devices required by certain individuals to secure help in an emergency for safety in the community.

(49) "Person-Centered Planning" means a process, either formal or informal, for gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals and lifestyle preferences; and

(b) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources.

(c) The process helps the individual and those significant to the individual to identify, use, and strengthen naturally occurring opportunities for support at home and in the community. Methods for gathering information vary, but all are consistent with individual needs and preferences, ranging from simple interviews with the individual to informal observations in home and community settings to formally structured meetings.

(50) "Physical Therapy" means services provided by a professional licensed under ORS 688.020 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(51) "Plan Year" means twelve (12) consecutive months used to calculate an individual's annual Basic Benefit. Unless otherwise set according to conditions of OAR 411-340-0120(4)(h) or 411-340-0130(4)(b)(G), the initial Plan Year begins on the start date specified on the individual's first ISP after enrollment in a Brokerage after that ISP is approved and signed by the CDDP authorizing implementation; subsequent Plan Years begin on the anniversary of the start date of this initial plan.

(52) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(53) "Prescription medication" means any medication that requires a physician prescription before it can be obtained from a pharmacist.

(54) "Primary Caregiver" means the person identified in an individual's ISP as providing the majority of care and support for an individual in the individual's home.

(55) "Productivity" is defined in ORS 427.005 and means engagement in income-producing work by a person with mental retardation or developmental disabilities that is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or developmental disabilities in work contributing to a household or community.

(56) "Provider Organization" means an entity selected by an individual or the individual's legal representative, and paid with Support Service funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(57) "Provider Organization Director" means the employee of a Provider Organization responsible for administration and provision of services according to these rules.

(58) "Psychotropic medication" is defined as a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(59) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(60) "Respite Care" means short-term care and supervision provided because of the absence, or need for relief of, persons normally providing the care to individuals unable to care for themselves. Respite may be provided in the individual's or respite provider's home, a foster home, a group home, a licensed day care center, or a community care facility that is not a private residence. Respite includes two types of care, neither of which can be characterized as 8-hours-a-day, 5-days-a-week services or are provided to allow caregivers to attend school or work:

(a) Temporary Respite Care that is provided on less than a 24-hour basis, and

(b) 24-Hour Overnight Care that is provided in segments of 24-hour units that may be sequential.

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(61) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(62) "Self-administration of medication" means the individual manages and takes his/her own medication. It includes identifying his/her medication and the times and methods of administration, placing the medication internally in or externally on his/her own body without staff assistance, upon written order of a physician, and safely maintaining the medication(s) without supervision.

(63) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom — The ability for an individual with a developmental disability, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority — The ability for a person with a developmental disability (with the help of a social support network if needed) to control a certain sum of resources in order to purchase support services;

(c) Autonomy — The arranging of resources and personnel — both formal and informal — that will assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility — The acceptance of a valued role in a person's community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for persons with developmental disabilities.

(64) "Social Benefit" or "Social Service" means a service solely intended to assist an adult with disabilities to function in society on a level comparable to that of an adult who does not have such disability. Such a benefit or service does not:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability;

(b) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without disabilities; or

(c) Replace other governmental or community services available to an individual. Financial assistance provided as a social benefit or social services does not exceed the actual cost of the support required by an individual and must be either:

(A) Reimbursement for an expense authorized in a previously-approved plan of service; or

(B) An advance payment in anticipation of an expense authorized in a previously negotiated and approved ISP.

(65) "Special Diet" means specially prepared food or particular types of food needed to sustain the individual in the family home. Special diets can include: high caloric supplements; gluten-free supplements; diabetic, ketogenic or other metabolic supplements. Special diets are ordered by a physician and periodically monitored by a dietician. Special diets are supplements and are not intended to meet an individual's complete daily nutritional requirements. Special diets do not provide or replace the nutritional equivalent of meals and snacks normally required regardless of disability.

(66) "Specialized Medical Equipment and Supplies" mean devices, aids, controls, supplies, or appliances that enable individuals to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. This service includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State plan. It does not include items not of direct medical or remedial benefit to the individual. All items meet applicable standards of manufacture, design, and installation.

(67) "Specialized Supports" mean treatment, training, consultation or other unique services necessary to achieve outcomes in the plan of care that are not available through State Medicaid Plan services or other Support Services listed in OAR 411-340-0130(6)(a) through (p) Typical supports include the services of a behavior consultant, a licensed nurse, or a social/sexual consultant to:

(a) Assess the needs of the individual and family, including environmental factors;

(b) Develop a plan of support;

(c) Train caregivers to implement the support plan;

(d) Monitor implementation of plan; and

(e) Revise the plan as needed.

(68) "Speech and Language Therapy Services" means the services of a professional licensed under ORS 681.250 that are defined under the

approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(69) "Support" means assistance that individuals require--solely because of the effects of disability--to maintain or increase independence, achieve community presence and participation, and improve productivity. This assistance is flexible and subject to change with time and circumstances.

(70) "Supported Employment Services" means provision of job training and supervision available to assist an individual who needs intensive ongoing support to choose, get, and keep a job in a community business setting. Supported employment is a service planned in partnership with public vocational assistance agencies and school districts and through Social Security Work Incentives when available.

(71) "Support Services" means the services of a Support Services Brokerage listed in OAR 411-340-0120(1) as well as the uniquely determined activities and purchases arranged through the Brokerage. Support Services:

(a) Complement the existing formal and informal supports that exist for an individual living in his or her own home or family home;

(b) Are designed, selected, and managed by the individual or individual's legal representative;

(c) Are provided in accordance with an ISP; and

(d) May include purchase of supports as a social benefit required for an individual to live in the individual's home or the family home.

(72) "Support Service Brokerage" or "Brokerage" means an entity, or distinct operating unit within an existing entity, that performs the functions listed in OAR 411-340-0120(1)(a) through (g) associated with planning and implementation of Support Services for adults with developmental disabilities, using the principles of self-determination described in OAR 411-340-0020(63).

(73) "Support Service Brokerage Director" or "Brokerage Director" means the employee of a publicly or privately-operated Support Service Brokerage who is responsible for administration and provision of services according to these rules.

(74) "Support Service Brokerage Plan of Care Crisis Addendum" means the short-term plan that is required by the Department to be added to an individual's ISP to describe crisis/diversion services an individual is to receive while he or she is in emergent status in a short-term residential placement. This short-term plan is coordinated by staff of the CDDP of the individual's county of residence.

(75) "Support Service Brokerage Policy Oversight Group" or "Policy Oversight Group" means the group formed to provide consumer-based leadership and advice to each Support Service Brokerage regarding issues such as development of policy, evaluation of services, and use of resources and which meets the requirements of OAR 411-340-0150(1) for such groups.

(76) "Support Services Funds" means public funds designated by the Support Services Brokerage for assistance with the purchase of supports according to each ISP.

(77) "Support Specialist" means an employee of a CDDP that performs the essential functions necessary to ensure the proper use of support services resources for individuals served by a Brokerage and described in OAR 411-320-0010 through 411-320-0200.

(78) "Transportation" means services that allow individuals to gain access to community services, activities and resources that are not medical in nature.

(79) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

Stat. Auth.: ORS 409.050 & 410.070

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1760, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05

## 411-340-0030

### Certification of Support Service Brokerages and Provider Organizations

(1) Certificate required. No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, manage or operate a Support Service Brokerage without being certified under these rules. No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, or operate a Provider Organization with

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out either certification under these rules or current Department license or certification described in OAR 411-340-0170(1).

(a) Not transferable. Each certificate is issued only for the Support Service Brokerage, or for the Provider Organization requiring certification under OAR 411-340-0170(2), and persons or governmental units named in the application and is not transferable or assignable.

(b) Terms of certificate. Each certificate is issued for a maximum of two years.

(c) Department review. The Department must conduct a review of the Brokerage or Provider Organization requiring certification under OAR 411-340-0170(2) prior to the issuance of a certificate.

(2) A Support Service Brokerage or a Provider Organization requiring certification under OAR 411-340-0170(2) must apply for initial certificate and for certificate renewal.

(a) Form. The application must be on a form provided by the Department and must include all information requested by the Department.

(b) Initial application. The applicant for certification as a Support Services Brokerage must identify the maximum number of individuals to be served.

(c) Renewal application. To renew certification, the Brokerage or Provider Organization requiring certification under OAR 411-340-0170(2) must make application at least 30 days but not more than 120 days prior to the expiration date of the existing certificate. On renewal of Brokerage certification, no increase in the maximum number of individuals to be served by the Brokerage may be certified unless specifically approved by the Department.

(d) Renewal application extends expiration date. Application for renewal must be filed no more than 120 days prior to the expiration date of the existing certificate and will extend the effective date until the Department or its designee takes action upon such application.

(e) Incomplete or incorrect information. Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application may result in denial, revocation or refusal to renew the certificate.

(f) Demonstrated capability. Prior to issuance or renewal of the certificate the applicant must demonstrate to the satisfaction of the Department that the applicant is capable of providing services identified in a manner consistent with the requirements of these rules.

(3) Certification expiration, termination of operations, certificate return.

(a) Expiration. Unless revoked, suspended or terminated earlier, each certificate to operate a Support Services Brokerage or a Provider Organization requiring certification under OAR 411-340-0170(2) will expire on the expiration date specified on the certificate.

(b) Termination of operation. If operation of a Support Services Brokerage or Provider Organization requiring certification under OAR 411-340-0170(2) is discontinued, the certificate terminates automatically on the date the operation is discontinued.

(4) Change of ownership, legal entity, legal status, management corporation. The Support Service Brokerage or Provider Organization requiring certification under OAR 411-340-0170(2) must notify the Department in writing of any pending action resulting in a 5% or more change in ownership and of any pending change in the Brokerage's or Provider Organization's legal entity, legal status or management corporation.

(5) New certificate required. A new certificate is required upon change in a Support Service Brokerage's or Provider Organization's ownership/legal entity or legal status. The Support Service Brokerage or Provider Organization must submit a certificate application at least 30 days prior to change in ownership or legal entity or legal status.

(6) Certificate denial, revocation, refusal to renew. The Department may deny, revoke or refuse to renew a certificate when it finds the Brokerage or Provider Organization, the Brokerage or Provider Organization director, or any person holding five percent or greater financial interest in the Brokerage or Provider Organization:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized and fails to correct the non-compliance within 30 calendar days of receipt of written notice of non-compliance; or

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized during two inspections within a six year period (for the purpose of this subsection, "inspection" means an on-site review of the service site by the Department for the purpose of investigation or certification); or

(c) Has been convicted of a felony; or

(d) Has been convicted of a misdemeanor associated with the operation of a Brokerage or Provider Organization; or

(e) Falsifies information required by the Department to be maintained or submitted regarding care of individuals, program finances or individuals' funds; or

(f) Has been found to have permitted, aided or abetted any illegal act that has had significant adverse impact on individual health, safety or welfare; or

(g) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(7) Notice of certificate denial, revocation, or refusal to renew. Following a Department finding that there is a substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized, or that one or more of the events listed in section OAR 411-340-0030(6)(a) through (g) has occurred, the Department may issue a notice of certificate revocation, denial or refusal to renew.

(8) Immediate suspension of certificate. In any case where the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension hearing and the service may not continue operation.

(9) Hearing. Following issuance of a notice of certificate denial, revocation, refusal to renew, or suspension, the Department will provide the opportunity for a hearing pursuant to OAR 411-340-0030(9)(a) through (c).

(a) Hearings rights and administrative review. An applicant for a certificate, or certificate holder, upon written notice from the Department of denial, suspension, revocation or refusal to renew a certificate, may request a hearing pursuant to the Contested Case Provisions of ORS Chapter 183. In addition to, or in lieu of, a contested case hearing, the applicant or certificate holder may request a review by the Department Administrator or designee of denial, suspension, revocation or refusal to renew a certificate. This review does not diminish the right of the applicant or certificate holder to a hearing.

(b) Request for hearing. Upon written notification by the Department of revocation, denial or refusal to renew a certificate, pursuant to OAR 411-340-0030(9)(a), the applicant/certified program will be entitled to a hearing in accordance with ORS Chapter 183 within 60 days of receipt of notice. The request for a hearing must include an admission or denial of each factual matter alleged by the Department and must affirmatively allege a short plain statement of each relevant, affirmative defense the applicant or certified program may have.

(c) Hearing rights under OAR 411-340-0030(8). In the event of a suspension pursuant to OAR 411-340-0030(8) and during the first 30 days after the suspension of a certificate, the certified program will be entitled to an administrative review within 10 days after its written request to the Department for a review regarding certificate suspension. Any review requested after the end of the 30-day period following certificate suspension will be treated as a request for hearing under OAR 411-340-0030(9)(b). If following the administrative review the suspension is upheld, the certified program may request a hearing pursuant to the Contested Case Provisions of ORS Chapter 183.

Stat. Auth.: ORS 409.050 & 410.070

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1770, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05

### 411-340-0040

#### Abuse and Unusual Incidents in Support Service Brokerages and Provider Organizations

(1) Abuse prohibited. Any adult as defined by OAR 411-340-0020(6) or individual as defined by OAR 411-340-0020(37) will not be abused nor will abuse be condoned by any employee, staff or volunteer of the Brokerage or Provider Organization.

(a) Basic personnel policies and procedures. Support Service Brokerages and Provider Organizations must have in place appropriate and adequate disciplinary policies and procedures to address instances when a staff member has been identified as an alleged perpetrator in an abuse investigation as well as when the allegation of abuse has been substantiated.

(b) Mandatory abuse reporting personnel policies and procedures. Any employee of a Brokerage or Provider Organization is required to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official capacity, has abused the individual. Notification of mandatory reporting status must be made at least annually to all employees on forms pro-



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vided by the Department. All employees must be provided with a Department-produced card regarding abuse reporting status and abuse reporting.

(2) Unusual Incidents.

(a) Written report. A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual and a Brokerage or Provider Organization employee must be prepared at the time of the incident and placed in the individual's record. Such description must include:

- (A) Conditions prior to or leading to the incident;
- (B) A description of the incident;
- (C) Staff response at the time; and
- (D) Administrative review and follow-up to be taken to prevent recurrence of the injury, accident, physical aggression or unusual incident.

(b) Copies sent to Support Specialist and Brokerage. Copies of all unusual incident reports involving abuse that occurs while an individual is receiving Brokerage or Provider Organization services must be sent to the CDDP Support Specialist. Copies of reports of all unusual incidents that occur while the individual is receiving services from a Provider Organization, must be sent to the individual's Brokerage within five working days of the incident.

(c) Immediate notification of allegations of abuse and abuse investigations. The Brokerage must immediately report to the CDDP, and the Provider Organization must report to the CDDP with notification to the Brokerage, any incident or allegation of abuse falling within the scope of OAR 411-340-0020(1). When the CDDP has initiated an abuse investigation, the CDDP must ensure that either the Support Specialist or the Brokerage also immediately notify the individual's legal guardian or conservator. The parent, next of kin or other significant person may also be notified unless the individual requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or unless notification has been specifically prohibited by law.

(d) Immediate notification. In the case of a serious illness, injury or death of an individual, the Brokerage or Provider Organization must immediately notify:

- (A) The individual's legal guardian or conservator, parent, next of kin, designated contact person or other significant person;
- (B) The Community Developmental Disability Program; and
- (C) In the case of the Provider Organization, the individual's Support Services Brokerage.

Stat. Auth.: ORS 409.050 & 410.070  
Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.348  
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1780, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05

## 411-340-0050 Inspections and Investigations in Support Service Brokerages and Provider Organizations

(1) Inspections and investigations required. All services covered by this rule must allow the following types of investigations and inspections:

- (a) Quality assurance and on-site inspections;
- (b) Complaint investigations; and
- (c) Abuse investigations.

(2) Inspections and investigations by the Department, CDDP or proper authority. The Department, CDDP, or proper authority will perform all inspections and investigations.

(3) Unannounced. Any inspection or investigation may be unannounced.

(4) Required documentation. All documentation and written reports required by this rule must be:

- (a) Open to inspection and investigation by the Department, CDDP or proper authority; and
- (b) Submitted to the Department within the time allotted.

(5) Priority of investigation under (1)(c) of this rule. When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or CDDP has determined to initiate an investigation, the Support Services Brokerage or Provider Organization must not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an internal investigation is defined as conducting interviews with the alleged victim, witness, the alleged perpetrator or any other person who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

- (a) If there is reasonable cause to believe that abuse has occurred; or

(b) If the alleged victim is in danger or in need of immediate protective services; or

- (c) If there is reason to believe that a crime has been committed; or
- (d) What, if any, immediate personnel actions will be taken.

(6) The Department or CDDP must conduct investigations as prescribed in OAR 410-009-0050 through 410-009-0160, Abuse Reporting and Protective Services in Community Programs and Community Facilities, and must complete an Abuse Investigation and Protective Services Report according to OAR 410-009-0120. The report must include the findings based upon the abuse investigation. "Inconclusive" means that the matter is not resolved, and the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur. "Not substantiated" means that based on the evidence, it was determined that there is reasonable cause to believe that the alleged incident was not in violation of the definitions of abuse and/or attributable to the person(s) alleged to have engaged in such conduct. "Substantiated" means that based on the evidence there is reasonable cause to believe that conduct in violation of the abuse definitions occurred and such conduct is attributable to the persons(s) alleged to have engaged in the conduct. Upon completion of the abuse investigation by the Department, CDDP, or a law enforcement agency, a service provider may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(8) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 410-009-0120, the sections of the report that are public records and not exempt from disclosure under the public records law must be provided to the appropriate Support Service Brokerage or Provider Organization.

(9) Plan of improvement. A plan of improvement must be submitted to the Department for any noncompliance found during an inspection pursuant to OAR 411-340-0050(1)(a).

Stat. Auth.: ORS 409.050 & 410.070  
Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.348  
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1790, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05

## 411-340-0060 Grievances and Appeals in Support Service Brokerages and Provider Organizations

(1) Grievances. Support Services Brokerages and Provider Organizations must develop and implement written policies and procedures regarding individual informal complaints and formal grievances. These policies and procedures must at minimum address:

(a) Informal resolution. These policies and procedures must provide opportunity for an individual or someone acting on behalf of the individual to informally discuss and resolve any allegation that a Brokerage or Provider Organization has taken action that is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing this opportunity must not preclude the individual or someone acting on behalf of the individual to pursue resolution through formal grievance processes;

(b) Receipt of grievances. The policies and procedures must describe how the Brokerage or Provider Organization receives and documents grievances from individual(s) and others acting on the behalf of individuals. If a grievance is associated in any way with abuse, the recipient of the grievance must immediately report the issue to the CDDP and notify the Brokerage Director and, if applicable, the Provider Organization Director;

- (c) Investigation of the facts supporting or disproving the grievance;
- (d) Taking appropriate actions on grievances within five working days following receipt of grievance;

(e) Review by the Brokerage Director if the grievance involves Brokerage staff or services, or by the Provider Organization Director if the grievance involves Provider Organization staff or services, if the grievance is not or cannot be resolved with Brokerage or Provider Organization staff, respectively. Such review must be completed and a written response to the grievant provided within 15 days following receipt of the grievance; and

(f) Third-party review when grievances are not resolved by the Brokerage Director or Provider Organization Director.

(A) Unless the grievant is a Medicaid recipient who has elected to initiate hearing processes according to OAR 411-340-0060(3), grievances having to do with development of an individual's ISP, services at variance with the type, amount, frequency, or duration specified in an individual's written ISP, or the selection of any provider of service specified in the individual's ISP must be submitted to the CDDP for review.

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(i) This review must be completed according to the CDDP dispute resolution policy and a written response must be provided to the grievant within the timelines described in that policy.

(ii) If the grievance remains unresolved after review by the CDDP, it may be submitted to the Department Administrator or designee for review. Such review must be completed and a written response to the grievant provided within 45 days of receipt of the grievant's written request for Department review. The decision of the Department Administrator or designee will be final unless the grievant is a Medicaid recipient who chooses to initiate further hearing according to OAR 411-340-0060(3).

(B) When a grievance does not involve the circumstances of OAR 411-340-0060(1)(f)(A), and the grievant is not a Medicaid recipient electing to initiate hearing processes according to OAR 411-340-0060(3), the grievance may be submitted directly to the Department Administrator or designee for review. Such review must be completed and a written response to the grievant provided within 45 days of receipt of the grievant's written request for Department decision of the Department Administrator or designee is final.

(g) Documentation of each grievance and its resolution must be filed or noted in the grievant's record. If a grievance resulted in disciplinary action against a staff member, the documentation must include a statement that disciplinary action was taken.

(h) Copies of all grievances to Support Specialist. Copies of the documentation on all grievances must be sent by the Brokerage or Provider Organization to the Support Specialist within 15 working days of initial receipt of the grievance.

(2) Notification. The Brokerage and Provider Organization must inform each individual, or the individual's legal representative, orally and in writing, of the Brokerage or Provider Organization grievance policy and procedures.

(a) The Brokerage and Provide Organization must inform each individual Medicaid recipient, or the individual Medicaid recipient's legal representative, orally and in writing, of the right of a Medicaid recipient to move directly to hearing as per OAR 411-340-0060(3) at any point if the Brokerage, Provider Organization or Department does not address a grievance satisfactorily.

(b) Information must be presented using language, format, and methods of communication appropriate to the individual's needs and abilities.

(3) Denial, termination, suspension, or reduction of services for individual Medicaid recipients.

(a) Each time the Brokerage takes an action to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid, the Brokerage must notify the individual or the individual's legal representative(s) of the right to a hearing and the method to obtain a hearing. The Brokerage must mail the notice, or personally serve it to the individual or the individual's legal representative(s) ten (10) days or more prior to the effective date of an action.

(A) The Brokerage must use the Oregon Medical Assistance Program (OMAP) form 3030, Notice of Hearing Rights, or comparable Department-approved form for such notification.

(B) This notification requirement will not apply if an action is part of, or fully consistent with, the ISP and the individual, or the individual's legal representative(s), has agreed with the action by signature to the plan.

(b) The individual or the individual's legal representative may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to the Brokerage. At the time the Brokerage denies a written request for additional or different services, it must notify the appealing party, in writing, of the information specified in section (3)(c) of this rule.

(c) A notice required by sections (3)(a) or (3)(b) of this rule must be served upon the appealing party personally or by certified mail. The notice must state:

(A) What action the Brokerage intends to take;

(B) The reasons for the intended action;

(C) The specific regulations that support, or the change in Federal or State law that requires, the action;

(D) The appealing party's right to a contested case hearing in accordance with OAR Chapter 137, Oregon Attorney General's Model Rules and 42 CFR Part 431, Subpart E;

(E) That the Brokerage's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of making a prima facie case;

(F) That the actions specified in the notice will take effect by default if the Department representative does not receive a request for a hearing

from the party within 45 days from the date that the Brokerage mails the notice of action;

(G) In circumstances of an action based upon a change in law, the circumstances under which a hearing will be granted; and

(H) An explanation of the circumstances under which Brokerage services will be continued if a hearing is requested.

(d) If the individual or the individual's legal representative(s) disagree with a decision or proposed action by the Brokerage, the party may request a contested case hearing. The Department representative must receive the signed form within 45 days after the Brokerage mailed the notice of action.

(e) The individual or the individual's legal representative(s) may request an expedited hearing if he or she feels that there is immediate, serious threat to the individual's life or health should he or she follow the normal timing of the hearing process.

(f) If the individual or individual's legal representative(s) request an administrative hearing before the effective date of the proposed actions and requests that the existing services be continued, the Department must continue the services. The Department will continue the services until whichever of the following occurs first, but in no event must services be continued in excess of ninety days from the date of the individual's (or individual's legal representative's) request for an administrative hearing:

(A) The current authorization expires;

(B) The hearings officer issues a proposed order and the Department renders a final order about the complaint; or

(C) The individual is no longer eligible for Medicaid benefits.

(D) The Department must notify the individual or individual's legal representative(s) that it is continuing the service. The notice must inform the individual or individual's legal representative that, if the hearing is resolved against him or her, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(g) The Department must reinstate services if:

(A) The Department takes an action without providing the required notice and the individual or individual's legal representative requests a hearing;

(B) The Department does not provide the notice in the time required in this rule and the individual or individual's legal representative requests a hearing within ten days of the mailing of the notice of action; or

(C) The post office returns mail directed to the individual or individual's legal representative, but the location of the individual or the individual's legal representative becomes known during the time that the individual is still eligible for services.

(D) The Department must promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the individual, or the Department decides in the individual's favor before the hearing.

(h) The Department representative and the individual or the individual's legal representative(s) may have an informal conference, without the presence of the hearings officer, to discuss any of the matters listed in OAR 137-003-0575, Prehearing Conferences. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the individual or individual's legal representative to settle the matter;

(B) Ensure the individual or individual's legal representative understands the reason for the action that is the subject of the hearing request;

(C) Give the individual or individual's legal representative an opportunity to review the information that is the basis for that action;

(D) Inform the individual or individual's legal representative of the rules that serve as the basis for the contested action;

(E) Give the individual or the individual's legal representative and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the individual or the individual's legal representative wishes to have any witness subpoenas issued; and

(G) Give the Department an opportunity to review its action or the action of the Brokerage.

(i) The individual or individual's legal representative(s) may, at any time prior to the hearing date, request an additional conference with the Department representative. At his or her discretion, the Department representative may grant such a conference if it will facilitate the hearing process.

(j) The Department may provide the individual or individual's legal representative the relief sought at any time before the final order is served.

(k) Withdrawals. An individual or the individual's legal representative may withdraw a hearing request at any time. The withdrawal will be effective on the date the Department or the hearings officer receives it. The Department must send a final order confirming the withdrawal to the last

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known address of the individual or the individual's legal representative. The individual or individual's legal representative may cancel the withdrawal up to the tenth workday following the date such an order is issued.

(1) Proposed and final orders.

(A) In a contested case, the hearings officer must serve a proposed order on the individual and the Department.

(B) If the hearings officer issues a proposed order that is adverse to the individual, the individual or the individual's legal representative may file exceptions to the proposed order to be considered by the Department. The exceptions must be in writing and must reach the Department not later than ten days after service of the proposed order. The individual or the individual's legal representative may not submit additional evidence after this period unless the Department prior-approves.

(C) After receiving the exceptions, if any, the Department may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

Stat. Auth.: ORS 409.050 & 410.070

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1800, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05

## 411-340-0080

### Support Service Brokerage and Provider Organization Records

(1) Confidentiality. Brokerage and Provider Organization records of services to individuals must be kept confidential in accordance with ORS 179.505, 45 CFR 205.50, 45 CFR 164.512 Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA and any Department administrative rules or policies pertaining to individual service records.

(2) Disclosure and confidentiality. For the purpose of disclosure from individual medical records under these rules, Brokerages and Provider Organizations requiring certification under OAR 411-340-0170(2) will be considered "providers" as defined in ORS 179.505(1), and 179.505 will be applicable. Access to records by the Department does not require authorization by the individual or family. For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(3) General financial policies and practices. The Support Service Brokerage or Provider Organization must:

(a) Maintain up-to-date accounting records accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities, consistent with generally accepted accounting principles.

(b) As a Provider Organization, or as a Brokerage offering services to the general public, establish and revise as needed a fee schedule identifying the cost of each service provided. Billings for Title XIX funds must not exceed the customary charges to private clients for any like item or service charged by the Brokerage or Provider Organization.

(c) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement.

(4) Records retention. Records must be retained in accordance with OAR Chapter 166, Secretary of State, Archives Division. Financial records, supporting documents, statistical records, and all other records (except individual records) must be retained for a minimum of three years after the close of the contract period. Individual records must be kept for a minimum of seven years.

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

Stat. Auth.: ORS 409.050 & 410.070

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1820, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05

## 411-340-0090

### Common Standards: Variances

(1) Criteria for a variance. Variances may be granted to a Brokerage or Provider Organization if the Brokerage or Provider Organization lacks the resources needed to implement the standards required in OAR chapter 411, division 340, if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules, or if there are other extenuating circumstances. OAR 411-340-0130, Using Support Services Funds to Purchase Support, and OAR 411-340-0140, Using Support Services Funds for Certain Services Is Prohibited, are specifically excluded from variance.

(2) Variance application. The Support Service Brokerage or Provider Organization requesting a variance must submit, in writing, an application to the Department that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept or procedure proposed;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) If the variance applies to an individual's services, evidence that the variance is consistent with a currently-approved ISP according to OAR 411-340-0120(6).

(3) Department review. The Administrator or designee may approve or deny the request for a variance.

(4) Notification. The Department must notify the Brokerage or the Provider Organization and the CDDP of the decision. This notice must be sent within 45 calendar days of the receipt of the request by the Department with a copy sent to all relevant Department programs or offices. (5) Appeal. Appeal of the denial of a variance request must be made in writing to the Department Administrator or designee, whose decision is final.

(6) Duration of variance. The Department will determine the duration of the variance.

(7) Written approval. The Brokerage may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 & 410.070

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1830, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05

## 411-340-0110

### Standards for Support Service Brokerage Entry and Exit

(1) Providing basic information. The Support Services Brokerage must make accurate, up-to-date information about the program available to individuals referred for services. This information must include:

(a) A declaration of program philosophy;

(b) A brief description of the services provided by the program, including typical timelines for activities;

(c) A description of processes involved in using the services, including application and referral, assessment, planning, and evaluation;

(d) A declaration of Support Service Brokerage employee responsibilities as mandatory abuse reporters;

(e) A brief description of individual responsibilities for use of public funds;

(f) An explanation of individual rights, including rights to:

(A) Choose a Brokerage among Department contracted Brokerages in an individual's county of residence;

(B) Choose a Personal Agent among those available in the selected Brokerage;

(C) Select providers among those qualified according to OAR 411-340-0160, 411-340-0170, and 411-340-0180 to provide supports authorized through the ISP;

(D) Direct the services of support providers; and

(E) Raise and resolve concerns about Brokerage services, including specific rights to notification and hearing for Medicaid recipients according to OAR 411-340-0060(3) when services covered under Medicaid are denied, terminated, suspended, or reduced.

(g) Indication that additional information about the Support Service Brokerage is available on request. That information must include, but is not limited to:

(A) A description of the Support Service Brokerage's organizational structure;

(B) A description of any contractual relationships the Support Service Brokerage has in place or can establish to accomplish the Support Service Brokerage functions required by this rule; and

(C) A description of the relationship between the Support Services Brokerage and its Policy Oversight Group.

(h) The Brokerage must make information required in OAR 411-340-0110(1)(a) through (g) available using language, format, and presentation methods appropriate for effective communication according to individuals' needs and abilities.

(2) Entry into Support Service Brokerage services.

(a) An individual must enter Support Service Brokerage services within 90 calendar days of the date the CDDP has completed processes of eligibility determination, selection of Brokerage, application, and referral except during the period of statewide Support Service Brokerage development July 1, 2001 through June 30, 2009. During that period, and unless the



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Department has implemented statewide changes in the order of group enrollments according to OAR 411-340-0110(2)(a)(E), individuals who have been determined eligible, selected the Brokerage, and completed CDDP processes for application and referral to the Brokerage will enter in the following order:

(A) First, and continuing through June 30, 2009, individuals who are not receiving any Department-funded developmental disability services as of the date the Brokerage is certified to provide services, entering according to priorities and characteristics described in written Department guidelines, and in order of date of formal application made during the CDDP referral process;

(B) Second, beginning while enrollment of individuals per OAR 411-340-0110(2)(a)(B) is still in progress and continuing through June 30, 2009, individuals receiving only Employment and Alternative to Employment services, regulated by OAR chapter 411, division 345 in the Brokerage's area of service, as of the date the Brokerage is certified to provide services; and

(C) Third, beginning while enrollment of individuals per OAR 411-340-0110(2)(a)(B) and 411-340-0110(2)(a)(C) is still in progress and continuing through June 30, 2009, individuals receiving Semi-Independent Living Services regulated by 309-041-0015.

(D) Notwithstanding the order of group enrollments indicated in OAR 411-340-0110(2)(a)(A) through (D), the Department may implement changes in the order of enrollment on a statewide basis when the Department has determined that such changes are prudent and necessary for the continued development and operation of Support Services Brokerages.

(b) The Support Services Brokerage must not accept individuals for entry beyond the total number of individuals specified in its current contract with the Department.

(3) Exit from a Support Services Brokerage. An individual must exit a Support Services Brokerage:

(a) At the written request of the individual or the individual's legal representative to end the service relationship;

(b) No less than thirty (30) days after the Support Service Brokerage has served written notice of intent to terminate services, when the individual either cannot be located or has not responded to repeated attempts by Support Service Brokerage staff to complete plan development and monitoring activities and, further, does not respond to the notice of intent to terminate; or

(c) Whenever the individual's emergent status exceeds two hundred seventy (270) days in twelve (12) consecutive months.

(d) Each Support Service Brokerage must have policies and procedures for notifying the CDDP of an individual's county of residence when that individual plans to exit, or exits, Brokerage services. Notification method, timelines, and content must be based on agreements between the Brokerage and CDDP's of each county in which the Brokerage provides services.

Stat. Auth.: ORS 409.050 & 410.070

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1850, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 8-2005, f. & cert. ef. 6-23-05

## 411-340-0120

### Support Service Brokerage Services

(1) Each Support Service Brokerage must provide or arrange for the following services as required to meet individual support needs:

(a) Assistance for individuals to determine needs, plan supports in response to needs, and develop individualized budgets based on available resources;

(b) Assistance for individuals to find and arrange the resources to provide planned supports;

(c) Assistance with development and expansion of community resources required to meet the support needs of individuals served by the Brokerage;

(d) Information, education, and technical assistance for individuals to use to make informed decisions about support needs and to direct support providers;

(e) Fiscal intermediary activities in the receipt and accounting of Support Service funds on behalf of an individual in addition to making payment with the authorization of the individual;

(f) Employer-related supports, assisting individuals to fulfill roles and obligations as employers of support staff when plans call for such arrangements; and

(g) Assistance for individuals to effectively put plans into practice, including help to monitor and improve the quality of supports as well as assess and revise plan goals.

(h) Support Service Brokerages must apply the principles of self-determination as defined in OAR 411-340-0020(62) to provision of services required in OAR 411-340-0120(1)(a) through (g).

(2) Person-centered planning process required. A Support Service Brokerage must use a person-centered planning approach to assist individuals to establish outcomes, determine needs, plan for supports, and review and redesign support strategies.

(3) Health and safety issues. The planning process must address basic health and safety needs and supports, including, but not limited to:

(a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(b) Informed decisions by the individual or the individual's legal representative regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(c) Education and support to recognize and report abuse.

(4) Written plan required. The Personal Agent must write an initial ISP that is signed by the individual (or the individual's legal representative) and, unless circumstances allow exception under OAR 411-340-0120(4)(h), dated within 90 days of entry into Support Service Brokerage services and at least annually thereafter. When an individual's legal representative must sign the plan, the individual's Personal Agent must also work with the legal representative to inform the individual as completely as possible of the contents of the plan and to obtain, to the degree possible, the individual's agreement to the plan. The plan or attached documents must include:

(a) The individual's name;

(b) A description of the supports required, including the reason the support is necessary;

(c) Projected dates of when specific supports are to begin and end;

(d) Projected costs, with sufficient detail to support estimates;

(e) A list of personal, community, and public resources that are available to the individual and how they will be applied to provide the required supports;

(f) The providers, or when the provider is unknown or is likely to change frequently, the type of provider (i.e. independent provider, provider organization, or general provider) of supports to be purchased with support services funds; and

(g) Schedule of plan reviews.

(h) The schedule of the first new Support Services ISP developed in compliance with OAR 411-340-0120(2) after an individual enters a Brokerage may be adjusted to promote continuity of services one time for any individual entering a Brokerage in certain circumstances. Such an adjustment will interrupt any Plan Year in progress and establish a new Plan Year for the individual beginning on the date the first new ISP is approved and signed by the CDDP authorizing implementation. Circumstances where this adjustment is permitted include:

(A) Transition of individuals receiving Self-Directed Support Services governed by 309-041-1110 through 1170 to Support Services between November 1, 2001, through June 30, 2002. The date of the individual's first ISP after enrollment in a Support Services Brokerage may be adjusted to correspond to the expiration date of the individual's Self-Directed Support Plan in place at the time of transition to the Support Service Brokerage if the Self-Directed Support Plan otherwise meets the requirements of OAR 411-340-0120(4)(a) through (g), has been approved for implementation by the CDDP Support Specialist prior to or upon the individual's enrollment in the Support Service Brokerage, and does not authorize support services fund expenditures in excess of the average monthly amount available through the Basic Benefit;

(B) Transition of individuals receiving Employment and Alternative to Employment services regulated by OAR chapter 411, division 345, without Department-paid residential services, to Support Services July 1, 2003. The date of the individual's first new Support Services ISP after enrollment in the Brokerage may be adjusted to correspond to the expiration date of the individual's ISP in place at the time of transition or to October 1, 2003, whichever is later, when the individual is among those required to transition into Support Services from Employment and Alternative to Employment services July 1, 2003, and when the ISP developed while the individual is still enrolled in Employment and Alternative to Employment services has been approved for implementation by the CDDP Support Specialist prior to or upon the individual's enrollment in the Support Service Brokerage;

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(C) Transition of individuals receiving Family Support Services for Children with Developmental Disabilities, regulated by OAR chapter 411, division 305, Children's Intensive In-Home Services (CIIS), regulated by OAR chapter 411, division 300, or Medically Fragile Children (MFC) Services, regulated by OAR chapter 411, division 350, when those individuals are 18 years of age. The date of the individual's first new Support Services ISP after enrollment in the Brokerage may be adjusted to correspond to the expiration date of the individual's annual plan (Child and Family Support Plan (Family Support), Complete Plan of Care (CIIS), or Comprehensive Plan of Care (MFC) in place at the time the individual turns 18 years of age when the annual plan developed while the individual is still receiving Family Support, CIIS, or MFC services has been approved for implementation by the CDDP Support Specialist prior to or upon the individual's enrollment in the Support Service Brokerage; or

(D) Transition of individuals receiving other Department-paid services who are required by the Department to transition to Support Services. The date of the individual's first Support Services ISP may be adjusted to correspond to the expiration date of the individual's plan for services that has been developed according to regulations governing Department-paid services the individual receives prior to transition, is current at the time designated by the Department for transition to Support Services, and is approved for implementation by the CDDP Support Specialist prior to or upon the individual's enrollment in the Support Service Brokerage.

(5) Professional or Other Service Plans. When applicable:

(a) A Nursing Care Plan must be attached to the ISP when support services funds are used to purchase care and services requiring the education and training of a licensed professional nurse; and

(b) A Support Services Brokerage Plan of Care Crisis Addendum, or other document prescribed by the Department for use in these circumstances, must be attached when an individual enrolled in a Brokerage:

(A) Has been determined eligible for crisis/diversion services according to OAR 411-320-0160 by the CDDP of the individual's county of residence; and

(B) The individual is in emergent status in a short-term out-of-home residential placement as part of his or her crisis/diversion services

(6) CDDP Support Specialist approval prior to implementation. With the exception of circumstances indicated in 411-340-0120(6)(c), the Support Services Brokerage must obtain written CDDP Support Specialist approval prior to implementation of:

(a) Initial and annual Individual Support Plans; and

(b) Significant changes in the ISP that include, but are not limited to, changes in the types of support purchased with support services funds and changes in supports that will cause total Plan Year expenses to exceed original estimates by more than 10%, but which do not include changes in the providers chosen to provide direct assistance to the individual.

(c) When immediate, unexpected, and significant change in the type of support purchased with support services funds is necessary outside of the normal hours of CDDP operation and to prevent injury or harm to the individual, the Brokerage may implement the change but must obtain written confirmation within 10 calendar days from the date of the change from the CDDP Specialist indicating that the change was appropriate and, if applicable, that ongoing change in services is approved.

(7) Periodic review of plan and resources. The Personal Agent will conduct and document reviews of plans and resources with the individual and the individual's legal representative as follows:

(a) At least quarterly, review and reconcile receipts and records of purchased supports authorized by the ISP;

(b) At least annually and as major activities or purchases are completed:

(A) Evaluate progress toward achieving the purposes of the plan, assessing and revising goals as needed;

(B) Record final Support Services fund costs;

(C) Note effectiveness of purchases based on Personal Agent observation as well as individual satisfaction; and

(D) Determine whether changing needs or availability of other resources has altered the need for continued use of support services funds to purchase supports.

(8) Transition to another Support Service Brokerage. At the request of an individual enrolled in Brokerage services who has selected another Brokerage, the Support Service Brokerage must collaborate with the receiving Brokerage and the CDDP of the individual's county of residence to effect transition of support services.

(a) If the Department has designated and contracted funds solely for the support of the transitioning individual, the Support Services Brokerage

must notify the Department to consider transfer of the funds for the individual to the receiving Support Services Brokerage.

(b) The ISP in place at the time of request for transfer may remain in effect 90 days after enrollment in the new Brokerage while a new plan is negotiated and approved.

Stat. Auth.: ORS 409.050 & 410.070

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1860, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05

### 411-340-0130

#### Using Support Services Funds to Purchase Supports

(1) Approved written plan required. A Support Services Brokerage may use support services funds to assist individuals to purchase supports in accordance with an ISP, which:

(a) Identifies supports that are necessary for an individual to live in his or her own home or in the family home;

(b) Specifies cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual;

(c) Projects the amount of support services funds, if any, that may be required to purchase the remainder of necessary supports and that are within the Basic Benefit limits, unless authorized for supplement to the Basic Benefit according to OAR 411-340-0130(4)(a) through (e); and

(d) Has been approved for implementation by the CDDP Support Specialist.

(2) Assistance is a social benefit. Goods and services purchased with support services funds on behalf of individuals are provided only as social benefits as defined in OAR 411-340-0020(63).

(3) Limits of financial assistance. Assistance with purchase of individual supports in any Plan Year as defined in OAR 411-340-0020(50) is limited to the Basic Benefit as defined in OAR 411-340-0020(6) unless individual circumstances meet the conditions of the exceptions indicated in OAR 411-340-0130(4)(a) through (i).

(a) Basic Benefit distribution for full Plan Year. Individuals must have access throughout the Plan Year to the total annual amount of support services funds determined necessary to implement an approved ISP, even if there is a delay in implementation of the plan, unless otherwise agreed to in writing by the individual or the individual's legal representative.

(b) Basic Benefit distribution adjustments. The Department may require that annual Basic Benefit amounts be calculated and applied on a monthly basis when an individual's eligibility for Medicaid changes during a Plan Year or when, for any reason, an individual's ISP is developed and written to be in effect for less than twelve months.

(A) In the case of an individual whose Medicaid eligibility changes, the monthly Basic Benefit limit will be one-twelfth of the annual Basic Benefit amount for which the individual would be eligible should the change in Medicaid status remain in effect for twelve calendar months. The monthly Basic Benefit limit will be applied each month for the remainder of the Plan Year in which the individual's change in Medicaid eligibility occurred, from the date the change occurred.

(B) In the case of an individual with an ISP developed for a partial Plan Year, the monthly Basic Benefit limit will be one-twelfth of the annual Basic Benefit amount for which the individual would be eligible should the individual's ISP be in effect for twelve months. The monthly Basic Benefit limit will be applied each month during which the ISP of less than 12 months' duration is in effect.

(c) Individual plan costs. Estimates of individual plan costs must be based on written guidelines for costs of frequently used services published and updated periodically by the Department.

(A) Department guidelines notwithstanding, final costs must not exceed local usual and customary charges for these services as evidenced by the Brokerage's own documented survey.

(B) The Support Service Brokerage must establish a process for review and approval of all budgets based on estimates exceeding published guidelines and must monitor the approved individual plans involved for continued cost effectiveness.

(4) Exceptions to Basic Benefit financial limits. Exceptions to the Basic Benefit annual Support Services fund limit may be only as follows:

(a) Extraordinary long-term need. Individuals with extraordinary long-term need as demonstrated by a score of sixty (60) or greater on the Basic Supplement Criteria Inventory, Form DHS203 may have access to more than the Basic Benefit Support Services fund limit in order to purchase necessary supports. The Basic Supplement Criteria Inventory, Form

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DHS 0203, specifies scoring levels and applicable maximum available funding.

(A) For Medicaid recipients choosing services under the Support Services waiver, the supplement to the Basic Benefit must result in a Plan Year cost that is less than the minimum allowable Plan Year cost for Comprehensive In-Home Support Services in the same biennium; and

(B) For individuals who are not Medicaid recipients choosing services under the Support Services waiver, the supplement to the Basic Benefit must result in a Plan Year cost that is less than the state's General Fund contribution to the minimum allowable Plan Year cost for in-home Comprehensive Services in the same biennium, calculated according to the Medicaid match rate current at the beginning of the Plan Year and adjusted annually to correspond to changes in the Medicaid match rates; and

(C) The Brokerage Director, or a designee from Brokerage management and administration, must administer the Basic Supplement Criteria only after receiving Department-approved training. The Brokerage Director or designee must score Basic Supplement Criteria according to written and verbal instruction received from the Department.

(D) The trained Brokerage Director or designee must administer the Basic Supplement Criteria within 30 calendar days of the written request of the individual or the individual's legal representative.

(E) The Brokerage Director or designee must send written notice of findings regarding eligibility for a supplement to the Basic Benefit to the individual and the individual's legal representative within 45 calendar days of the written request for a supplement. This written notice must include:

(i) An offer for the individual and individual's legal representative to discuss the findings in person with the Director and with the individual's Personal Agent in attendance if desired; and

(ii) A notice of appeal processes under 411-340-0060.

(F) Annual ISP reviews for recipients of the supplement must include a review of circumstances and resources to confirm continued need.

(b) Transfers from Employment and Alternative to Employment, Semi-Independent Living, and Self-Directed Support services according to Department-designated schedule of group enrollments under OAR 411-340-0110(2). Support service fund expenditures for individuals enrolled in these services prior to the designated date of group enrollment in Support Services Brokerages may, for a limited amount of time, exceed the Basic Benefit financial limits. To qualify, individuals must be enrolled in Employment and Alternative to Employment services regulated by OAR chapter 411, division 345, enrolled in Semi-Independent Living Services regulated by OAR 309-041-0015 through 0024, or receive Self-Directed Support services previously regulated by OAR 309-041-1110 through 1170 during the month prior to enrollment in a Support Services Brokerage and the Department's annual cost of this previous service must exceed the financial assistance available through the Basic Benefit.

(A) Each qualified individual transferring from Employment and Alternative to Employment Services November 1, 2001, through June 30, 2002, may have access to support services funds in an amount equal to the Department's previous cost for the individual in these services, as negotiated according to Department guidelines, for no more than three hundred sixty-five (365) calendar days from date of enrollment in the Support Services Brokerage;

(B) Each qualified individual transferring from Employment and Alternative to Employment Services beginning July 1, 2003, and who does not have any other Department-paid residential support services prior to that date, may have access to support services funds in an amount each month equal to the Department's previous Employment and Alternative to Employment monthly costs for the individual, as negotiated according to Department guidelines:

(i) For three hundred sixty-five (365) days, if he or she is a Medicaid recipient eligible for waiver services; or

(ii) For one hundred eighty (180) days, if he or she is not a Medicaid recipient eligible for waiver services.

(C) Each qualified individual transferring from Semi-Independent Living services may have access to support services funds in an amount equal to the Department's previous cost for the individual in these services, as negotiated according to Department guidelines, for no more than three hundred sixty-five (365) calendar days from date of enrollment in the Support Services Brokerage; and

(D) Each qualified individual transferring from Self-Directed Support services November 1, 2001, through June 30, 2002, may have access to support services funds in an amount equal to financial assistance authorized by his or her current Self-Directed Support Plan for no more than three hundred sixty-five (365) calendar days from date of enrollment in the Brokerage when the individual is a Medicaid recipient choosing to receive

Support Service waiver services and for no more than ninety (90) calendars days from date of enrollment in the Brokerage when the individual is not Medicaid-eligible or does not otherwise receive Medicaid benefits.

(E) Upon individual enrollment in the Brokerage, the Brokerage must fully inform the individual and the individual's legal representative of the time limit for the supplement to the Basic Benefit.

(F) The Support Services Brokerage must complete assessment, identify resources, and develop a new individualized plan and budget during this period with a goal of reducing Support Services fund annual costs to less than or equal to financial assistance available in the Basic Benefit.

(G) At any point during the individual's first year of enrollment in the Brokerage that annual plan costs are successfully reduced to a cost less than or equal to that available in the Basic Benefit, the individual's new Plan Year will begin on the date the revised ISP is authorized for implementation by the individual's CDDP Support Specialist.

(c) Prior-authorized crisis/diversion services. Individuals who have been assessed as in need of, and meeting criteria for, crisis/diversion services by the CDDP of the individual's county of residence according to OAR 411-320-0160 may receive short-term assistance with purchase of support in excess of the Basic Benefit. Use of crisis/diversion services may only be authorized by the CDDP of the individual's county of residence or by the Regional Crisis Program responsible for the individual's county of residence.

(A) Funds associated with crisis/diversion services may be used to pay the difference in cost between the authorized ISP and budget in place at the time the individual is determined eligible for crisis/diversion services, and the supports authorized by either the CDDP of the individual's county of residence, or the Regional Crisis Program responsible for crisis/diversion services in the individual's county of residence, depending on the source of crisis/diversion funds, to meet the short-term need.

(B) Although costs for crisis/diversion services may bring the individual's total Plan Year cost temporarily at or above the minimum allowable Plan Year cost of in-home Comprehensive Services in the same biennium, in no case may the individual's costs exceed the state's current ICF/MR daily cost per individual nor may Plan Year expenses at or above the minimum for Comprehensive Services make the individual eligible for Comprehensive Services.

(i) Individuals placed in emergent status due to receiving crisis/diversion services authorized and provided according to OAR 411-320-0160 may remain enrolled in, and receive Support Services from, the Support Service Brokerage while both crisis/diversion services and Support Services are required to stabilize and maintain the individual at home or in the family home. In no case, however, may the individual remain enrolled in the Support Service Brokerage under emergent status for more than 270 consecutive days in any 12-month period.

(ii) The individual's Personal Agent must participate with CDDP or regional crisis/diversion staff in efforts to stabilize supports and return costs to the Basic Benefit or approved supplement levels, documenting reviews of effectiveness at least every ninety (90) days while the individual is receiving crisis/diversion services.

(d) Conversions from other Department-regulated services. Individuals whose source of support funds are, in whole or in part, an individual-specific redirection of funds through Department contract from a Department-regulated residential, work, or day habilitation service to support services funds, or to Comprehensive In-Home Support funds regulated by OAR chapter 411, division 330 prior to enrollment in a Support Service Brokerage, may have access to the amount specified in the Department contract as available for the individual's use. This provision is only applicable when each transition is separate and specific to the individual and the services being converted are not subject to statewide service transitions described in OAR 411-340-0130(4)(b).

(A) Individual Plan Year costs must always be less than the minimum allowable Plan Year cost for in-home Comprehensive Services in the same biennium; and

(B) The Brokerage must review the need for supports and their cost-effectiveness with the individual and, if applicable, the individual's legal representative at least annually, and must make budget reductions when allowed by the ISP.

(e) Funds designated for services to individuals eligible for, and at imminent risk of, civil commitment under ORS 427. Individuals whose support funds were specifically assigned through Department contract to Self-Directed Support Services prior to the date designated by the Department for transfer of the individual from Self-Directed Support services to a Support Service Brokerage may have access to the amount specified in the Department contract as available for the individual's use.



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(A) Individual Plan Year costs must always be less than the minimum allowable Plan Year cost for in-home Comprehensive Services in the same biennium; and

(B) The Brokerage must review the need for supports and their cost-effectiveness with the individual and, if applicable, the individual's legal representative at least annually, and must make budget reductions when allowed by the ISP.

(f) Individuals transferring from Department waiver services for the Aged and Adults with Physical Disabilities. Individuals transferring from the Department's Home and Community-Based waiver services for the Aged and Adults with Physical Disabilities who have been determined ineligible for those waiver service funds, in accordance with OAR 411-015-0015(4)(c) will have limited access to support service funds, as described in OAR 411, division 340. The amount of support service funds available will be equal to the Department's previous service costs for the individual for no more than three hundred and sixty-five (365) calendar days. The three hundred and sixty-five (365) calendar days begins the date the individual starts receiving support services exclusively through a Support Service Brokerage.

(g) Supplemental needs for Activities of Daily Living. For Medicaid recipients eligible for and choosing services under the Support Services waiver, individuals with additional assistance needs in Activities of Daily Living (ADL) may have access to an additional \$2467 per year, prorated as needed, to purchase needed support services under the following conditions:

(A) The individual must have additional assistance needs with ADLs as defined in OAR 411-340-0020(2) after development of their individual Support Plan within the Basic Benefit, extraordinary long-term need fund limit, or other exceptions provided in this rule. The services include: basic personal hygiene; toileting, bowel and bladder care; mobility, transfers, comfort; planning and preparing nutritious meals, assuring adequate fluid intake; assisting with administration of medications, assuring medication is taken as ordered by physician, observing for reactions, reminding appropriate persons when prescriptions need to be filled, and maintaining clean oxygen equipment and supply; and delegated nursing tasks.

(B) Incidental activities as defined in OAR 411-034-0020(3). ADL services may include the following activities if they are incidental to the provision of Activities of Daily Living, essential for the health and welfare of the individual, and provided solely for the individual receiving support services: light housekeeping tasks necessary to maintain a healthy and safe environment, arranging for necessary medical appointments, observation of an individual's status and reporting of significant changes to appropriate people, first aid and handling emergencies and extra support due to mental retardation or developmental disability.

(C) Activities and goals related to the provision of ADL services are sufficiently documented in the individual's ISP.

(D) Planned expenses must be based upon the least costly means of providing adequate care, and must only be to the extent necessary to meet the documented ADL needs.

(E) This supplement cannot cause the cost per any plan year to exceed the minimum allowable Plan Year cost for Comprehensive In-Home Support Services in the same biennium, except as stated in the following: Individuals receiving both Support Services under these rules as of June 30, 2005 and State Plan Personal Care Services under OAR chapter 411, division 034 whose total combined annual costs exceed the minimum allowable Plan Year cost for Comprehensive In-Home Support Services in the same biennium may continue to develop future annual ISPs based on the budgeted annual cost amount until the individual terminates their receipt of Support Services.

(F) The Supplemental ADL services are not intended to replace the resources available to an individual receiving Support Services under these rules from their natural support system of relatives, friends, neighbors, or other available sources of support.

(G) For Medicaid recipients receiving State Plan Personal Care Services under OAR Chapter 411, division 034 entering Support Services after 06/30/05, the Medicaid Personal Care Resource Assessment Plan and Authorization, OMHS Form 0531, will serve as the individual's approved Plan of Care for a period not to exceed 90 days.

(5) Amount, method and schedule of payment.

(a) The Brokerage must disburse, or arrange for disbursement of, support services funds to qualified providers on behalf of individuals up to the amount agreed upon in an ISP that has been signed by the individual or the individual's legal representative and approved for implementation by the CDDP Support Specialist. The Brokerage is specifically prohibited from reimbursement of individuals or individuals' families for expenses related

to services and from advancing funds to individuals or individuals' families to obtain services.

(b) The method and schedule of payment must be specified in written agreements between Brokerage and the individual or individual's legal representative.

(6) Types of supports purchased. Supports eligible for purchase with support services funds are:

(a) Chore services as defined in OAR 411-340-0020(12);

(b) Community inclusion supports as defined in OAR 411-340-0020(14);

(c) Community living supports as defined in OAR 411-340-0020(15);

(d) Environmental accessibility adaptations as defined in OAR 411-340-0020(23);

(e) Family training as defined in OAR 411-340-0020(27);

(f) Homemaker services as defined in OAR 411-340-0020(33);

(g) Occupational therapy services as defined in OAR 411-340-0020(46);

(h) Personal emergency response systems as defined in OAR 411-340-0020(48);

(i) Physical therapy services as defined in OAR 411-340-0020(50);

(j) Respite care as defined in OAR 411-340-0020(60);

(k) Special diets as defined in OAR 411-340-0020(65);

(l) Specialized medical equipment and supplies as defined in OAR 411-340-0020(66) as well as the following provisions:

(A) When specialized medical equipment and supplies are primarily and customarily used to serve a medical purpose, then purchase, rental, or repair with support services funds must be limited to the types of equipment and supplies permitted under the State Medicaid Plan and, specifically, those that are not excluded under OAR 410-122-0080. Support services funds may be used to purchase more of an item than the number allowed under the State Medicaid Plan after the limits specified in the State Medicaid Plan have been reached, requests for purchases have been denied by Medicaid State Plan or private insurance, and the denial has been upheld in applicable Medicaid contested case hearing or private insurance benefit appeals process; and

(B) Devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase his or her abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which he or she lives, may be purchased with support services funds when the individual's developmental disability otherwise prevents or limits the individual's independence in these areas. Equipment and supplies that can be purchased for this purpose must be of direct benefit to the individual and include:

(i) Adaptive equipment for eating, (i.e., utensils, trays, cups, bowls that are specially designed to assist an individual to feed him/herself);

(ii) Adaptive beds;

(iii) Positioning devices;

(iv) Specially designed clothes to meet the unique needs of the individual with the disability, (e.g., clothes designed to prevent access by the individual to the stoma, etc.);

(v) Assistive technology items;

(vi) Computer software used by the individual to express needs, control supports, plan and budget supports;

(vii) Augmentative communication devices;

(viii) Environmental adaptations to control lights, heat, stove, etc.; or

(ix) Sensory stimulation equipment and supplies that help an individual calm, provide appropriate activity, or safely channel an obsession (e.g., vestibular swing, weighted blanket, tactile supplies like creams and lotions);

(m) Specialized supports as defined in OAR 411-340-0020(67);

(n) Speech and language therapy services as defined in OAR 411-340-0020(68);

(o) Supported employment as defined in OAR 411-340-0020(70); and

(p) Transportation as defined in OAR 411-340-0020(78).

(7) Conditions of purchase. The Brokerage must arrange for supports purchased with support services funds to be provided:

(a) In settings and under contractual conditions that allow the individual to freely redirect support services funds to purchase supports and services from another qualified provider;

(A) Individuals who choose to combine support services funds to purchase group services must receive written instruction about the limits and conditions of such arrangements;

(B) Combined support services funds cannot be used to purchase existing, or create new, Comprehensive Services;

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(C) Individual support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements and timekeeping for staff working with more than one individual;

(D) Combined arrangements for community inclusion or supported employment services that result in creation of a provider organization as defined in OAR 411-340-0020(56) must be certified according to OAR chapter 411, division 340; and

(E) Combined arrangements for residential supports must include a plan for maintaining an individual at home after the loss of roommates.

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 411-340-0020(52) and where behavior intervention is not undertaken unless the behavior:

- (A) Represents a risk to health and safety of the individual or others;
- (B) Is likely to continue to become more serious over time;
- (C) Interferes with community participation;
- (D) Results in damage to property; or
- (E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal care, training, and supervision;

(d) In accordance with applicable state or local building codes, in the case of environmental accessibility adaptations to the home;

(e) In accordance with Oregon Board of Nursing Administrative Rules 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks; and

(f) In accordance with OAR 411-340-0160 through 411-340-0180 governing provider qualifications and responsibilities.

(8) Independent Provider, Provider Organization, General Business Provider agreements and responsibilities. When Support Service funds are used to purchase care, training, supervision or other personal assistance for individuals, the Brokerage must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse as defined in OAR 411-340-0020(1);

(b) Responsibility to immediately notify the person or persons, if any, specified by the individual or individual's legal representative of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual care, training, or supervision and that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment:

(A) Support Service fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program; and

(B) The provider must bill all third party resources before using Support Service funds unless another arrangement is agreed upon by the Brokerage and described in the ISP;

(d) The provisions of OAR 411-340-0130(9) regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(9) Sanctions for Independent Providers, Provider Organizations, and General Business Providers.

(a) Sanction(s) may be imposed on a provider when the Brokerage determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with support services funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable criminal history check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Had his/her professional license suspended, revoked, or otherwise limited, or surrendered his/her license;

(D) Failed to safely and adequately provide the services authorized;

(E) Had an allegation of abuse or neglect substantiated against him or her;

(F) Failed to cooperate with any Department or Brokerage investigation, or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Not adhered to the provisions of OAR 411-340-0130(8) or 411-340-0140; or

(K) Been suspended or terminated as a provider by another agency within the Department.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with support services funds;

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the Brokerage or Department, as applicable;

(C) The Brokerage may withhold payments to the provider.

(c) If the Brokerage makes a decision to sanction a provider, the Brokerage must notify the provider by mail of the intent to sanction. The provider may appeal this action within 30 days of the date of the notice. The provider must appeal this action separately from any appeal of audit findings and overpayments.

(d) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Administrator of the Department or designee.

(e) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 days of the date the sanction notice was mailed to the provider.

(f) At the discretion of the Department, providers who have previously been terminated or suspended by any Department agency may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050 & 410.070

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1870, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 10-2004(Temp), f. & cert. ef. 4-30-04 thru 10-25-04; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05

## 411-340-0140

### Using Support Services Funds for Certain Purchases Is Prohibited

Support Service funds must not be used to pay for:

(1) Services, materials, or activities that are illegal;

(2) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 411-340-0020(1);

(3) Services from persons who engage in verbal mistreatment and subject an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation by threatening injury or withholding of services or supports;

(4) Services that restrict an individual's freedom of movement by seclusion in a locked room under any condition;

(5) Materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies;

(6) Individual or family vehicles;

(7) Health and medical costs that the general public normally must pay, including: medications; health insurance co-payments; dental treatments and appliances; medical treatments; dietary supplements including, but not limited to, vitamins and experimental herbal and dietary treatments; treatment supplies not related to nutrition, incontinence, or infection control;

(8) Ambulance services;

(9) Legal fees;

(10) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of disability, and are not strictly required by the individual's need for personal assistance in all home and community settings;

(11) Individual care, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(12) Services, activities, materials, or equipment that are not necessary or cost-effective, do not meet the definition of support as defined in OAR 411-340-0020(69), or do not meet the definition of social benefits as defined in OAR 411-340-0020(64);

(13) Educational services for school-age individuals over the age 18, including professional instruction, formal training and tutoring in communication, socialization, and academic skills, and post-secondary educational services such as those provided through two- or four-year colleges for individuals of all ages;

(14) Services, activities, materials, or equipment that can be obtained by the individual or family through other available means such as private or public insurance, or other governmental or public services;

(15) Unless under certain conditions and limits specified in rate-setting guidelines published by the Department, employee wages or contractor charges for time or services when the individual is not present or available to receive services, including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

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(16) Services or activities for which the Legislative or Executive Branch of Oregon government has prohibited use of public funds;

(17) Services when there is sufficient evidence to believe that the individual or individual's representative has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to accept or delegate record keeping required to use Support Service Brokerage resources, or otherwise knowingly misused public funds associated with Brokerage services.

(18) Services that, in the opinion of the individual's Personal Agent, are characterized by failure to act or neglect that leads to or is in imminent danger of causing physical injury, through negligent omission, treatment, or maltreatment of an adult, including but not limited to the failure to provide an adult with adequate food, clothing, shelter, medical care, supervision, or through condoning or permitting abuse of an adult by any other person. However, no person may be deemed neglected for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050 & 410.070

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1880, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05

## 411-340-0150

### Standards for Support Services Brokerage Administration and Operations

(1) Individual and family leadership. The Brokerage must develop and implement procedures for incorporating the direction, guidance and advice of individuals and family members of individuals in the administration of the organization.

(a) The Support Services Brokerage must establish and utilize a Policy Oversight Group, of which the membership majority must be individuals with developmental disabilities and family members of individuals with developmental disabilities.

(b) Brokerage procedures must be developed and implemented to assure the policy oversight group has the maximum authority that may be legally assigned or delegated over important program operational decisions, including such areas as program policy development, program planning and goal setting, budgeting and resource allocation, selection of key personnel, program evaluation and quality assurance, grievance or appeal resolution.

(c) If the Policy Oversight Group is not also the governing body of the Support Services Brokerage, then the Brokerage must develop and implement a written procedure that describes specific steps of appeal or remediation to resolve conflicts between the Policy Oversight Group and the governing body of the Brokerage.

(d) A Policy Oversight Group must develop and implement operating policies and procedures.

(2) Full-Time Brokerage Director required. The Support Services Brokerage must employ a full-time Director who is responsible for daily Brokerage operations in compliance with these rules and has authority to make budget, staffing, policy, and procedural decisions for the Brokerage.

(3) Director qualifications. In addition to general staff qualifications of OAR 411-340-0070(1) through (2), the Brokerage Director must have a minimum of a bachelor's degree and two years experience, including supervision, in developmental disabilities, social services, mental health or a related field; or six years of experience, including supervision, in the field of developmental disabilities or a social service/mental health field.

(4) Fiscal Intermediary requirements.

(a) Individuals or entities providing fiscal intermediary services must:

(A) Demonstrate a practical understanding of laws, rules and conditions that accompany the use of public resources;

(B) Develop and implement accounting systems that operate effectively on a large scale as well as track individual budgets;

(C) Establish and meet the time lines for payments that meet individuals' needs;

(D) Develop and implement an effective payroll system, including meeting payroll-related tax obligations;

(E) Generate service, management, and statistical information and reports required by the Brokerage Director and Policy Oversight Group to effectively manage the Brokerage and by individuals to effectively manage supports;

(F) Maintain flexibility to adapt to changing circumstances of individuals; and

(G) Provide training and technical assistance to individuals as required and specified in ISPs;

(b) Contractor and employee qualifications. The Support Brokerage must obtain and maintain written evidence that:

(A) Contractors providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities; and

(B) Employees providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities prior to hire or that the Brokerage has provided requisite education, training and experience.

(5) Personal Agent qualifications. Each Personal Agent must have:

(a) An undergraduate degree in a human services field and at least one year experience in the area of developmental disabilities; or

(b) Five years of equivalent training and work experience related to developmental disabilities.

(c) Knowledge of the public service system for developmental disability services in Oregon.

(A) Alternative plan to meet qualifications. Persons who do not meet the minimum qualifications set forth in 411-340-0150(5)(b)(A) may perform those functions only with prior approval of a variance by the Department. Prior to employment of an individual not meeting minimum qualifications for Personal Agent, the Brokerage must submit a written variance request to the Department. The request will include:

(i) An acceptable rationale for the need to employ an individual who does not meet the qualifications; and

(ii) A proposed alternative plan for education and training to correct the deficiencies;

(iii) The proposal must specify activities, timelines and responsibility for costs incurred in completing the plan.

(B) A person who fails to complete a plan for education and training to correct deficiencies may not fulfill the requirements for the qualifications.

(6) Separation of duties. When a CDDP operates a Brokerage:

(a) Support Specialist and Personal Agent activities, responsibilities, and costs must be clearly separated and delineated in individual files, staff job descriptions, and CDDP financial and service reports; and

(b) The individual's Personal Agent must not also be the individual's Support Specialist.

(7) Personal Agent training. The Brokerage must provide or arrange for Personal Agents to receive training needed to provide or arrange for Brokerage services, including, but not limited to principles of self-determination, person-centered planning processes, identification and use of alternative support resources, fiscal intermediary functions, basic employer/employee roles and responsibilities, developing new resources, major public health and welfare benefits, constructing and adjusting individualized support budgets, and assisting individuals to judge and improve quality of personal supports.

(8) Individual record requirements. The Brokerage must maintain current, up-to-date records for each individual served and must make these records available on request for Department review. These records must include, at minimum:

(a) Application and eligibility Information received from the referring CDDP;

(b) An easily-accessed summary of basic information, including individual name, family name (if applicable), individual's legal guardian or conservator (if applicable), address, telephone number, date of entry into the program, date of birth, sex, marital status, individual financial resource information, and Plan Year anniversary date;

(c) Documents related to determining eligibility for Brokerage services and the amount of support services funds available to the individual, including Basic Supplement Criteria if applicable;

(d) Records related to receipt and disbursement of funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-340-0160 through 0180;

(e) Documentation, signed by the individual or individual's legal representative, that the individual or individual's legal representative has been informed of responsibilities associated with the use of support services funds;

(f) Incident reports;

(g) Assessments used to determine supports required, preferences, and resources;

(h) Individual Support Plan and reviews;

(i) Personal Agent correspondence and notes related to resource development and plan outcomes; and



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(j) Information about individual satisfaction with personal supports and the Brokerage services.

(9) Special records requirements for Support Services fund expenditures. The Brokerage must develop and implement written policies and procedures concerning use of support services funds. These policies and procedures must include, but may not be limited to:

(a) Minimum acceptable records of expenditures;

(A) Itemized invoices and receipts to record purchase of any single item that costs \$25.00 or more;

(B) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(C) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals; and

(D) Pay records, including timesheets signed by both employee and employer, to record employee services.

(b) Procedures for confirming the receipt, and securing the use of, specialized medical equipment and environmental accessibility adaptations;

(A) When equipment is obtained for the exclusive use of an individual, the Support Services Brokerage must record the purpose, final cost, and date of receipt;

(B) The Brokerage must secure use of equipment or furnishings costing more than \$500 through a written agreement between the Brokerage and the individual or individual's legal representative that specifies the time period the item is to be available to the individual and the responsibilities of all parties should the item be lost, damaged, or sold within that time period;

(C) The Brokerage must ensure that projects for environmental accessibility adaptations involving renovation or new construction in an individual's home costing \$5000 or more per single instance or cumulatively over several modifications:

(i) Are approved by the Department before work begins and before final payment is made;

(ii) Are completed or supervised by a contractor licensed and bonded in the State of Oregon; and

(iii) That steps are taken as prescribed by the Department for protection of the Department's interest through liens or other legally available means; and

(D) The Brokerage must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure.

(c) Return of purchased goods. Any goods purchased with support services funds that are not used according to an ISP or according to an agreement securing the State's use may be immediately recovered. Failure to furnish written documentation upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Centers for Medicare and Medicaid Services or their authorized representatives immediately or within timeframes specified in the written request may be deemed reason to recover payments or deny further assistance.

(10) Quality Assurance.

(a) The Brokerage Policy Oversight Group must develop a Quality Assurance Plan and review this plan at least twice a year. The plan must include a written statement of values, organizational outcomes, activities, and measures of progress that:

(A) Uses information from a broad range of consumer, advocate, professional and other sources to determine community support needs and preferences;

(B) Involves individuals in ongoing evaluation of the quality of their personal supports; and

(C) Monitors:

(i) Customer satisfaction with the services of the Brokerage and with individual plans in areas such as individual access to supports, sustaining important personal relationships, flexible and unique support strategies, individual choice and control over supports, responsiveness of the Brokerage to changing needs and preferences of individuals; and

(ii) Service outcomes in areas such as achievement of personal goals and effective use of resources.

(b) The Brokerage must participate in statewide evaluation, quality assurance, and regulation activities as directed by the Department.

(11) Brokerage referral to affiliated entities.

(a) When a Brokerage is part of, or otherwise directly affiliated with, an entity that also provides services an individual may purchase with private or support services funds, Brokerage staff must not refer, recommend or otherwise support the individual to utilize this entity to provide services unless:

(A) The Brokerage conducts a review of provider options that demonstrates that the entity's services will be cost-effective and best-suited to provide those services determined by the individual to be the most effective and desirable for meeting needs and circumstances represented in the ISP; and

(B) The entity is freely selected by the individual and is the clear choice by the individual among all available alternatives.

(b) The Brokerage must develop and implement a policy that addresses individual selection of an entity of which the Brokerage is a part or otherwise directly affiliated to provide services purchased with private or support services funds. This policy must address, at minimum:

(A) Disclosure of the relationship between the Brokerage and the potential service provider;

(B) Provision of information about all other potential service providers to the individual without bias;

(C) A process for arriving at the option for selecting the service provider;

(D) Verification of the fact that the service providers were freely chosen among all alternatives;

(E) Collection and review of data on services, purchased by an individual enrolled in the Brokerage, by an entity of which the Brokerage is a part or otherwise directly affiliated; and

(F) Training of Personal Agents and individuals in issues related to selection of service providers.

(12) General operating policies and practices. The Support Services Brokerage must develop and implement such written statements of policy and procedure in addition to those specifically required by this rule as are necessary and useful to enable the agency to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050 & 410.070

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1890, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 8-2005, f. & cert. ef. 6-23-05

## 411-340-0160

### Standards for Independent Providers Paid with Support Services Funds

(1) General independent provider qualifications. Each independent provider who is paid as a contractor, a self-employed person, or an employee of the individual or individual's legal representative to provide homemaker, respite, habilitation, transportation, chore, family training, occupational therapy, physical therapy, speech and language, dietician, or specialized supports must:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Department policy and procedures for review of criminal history;

(c) Be legally eligible to work in the United States;

(d) Not be a spouse of the individual;

(e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the ISP, with such demonstration confirmed in writing by the individual or individual's legal representative and including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual;

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual being cared for;

(f) Hold current, valid, and unrestricted appropriate professional license or certification where care and supervision requires specific professional education, training and skill;

(g) Understand requirements of maintaining confidentiality and safeguarding individual information;

(h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers; and

(i) If providing transportation, have a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation service;

(2) Behavior consultants providing specialized supports must:

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(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention Services behavior intervention system, and have a current certificate; and

(c) Submit a resume to the brokerage indicating at least one of the following:

(A) A bachelor's degree in Special Education, Psychology, Speech and Communication, Occupational Therapy, Recreation, Art or Music Therapy, or a behavioral science field and at least one year of experience with people with developmental disabilities who present difficult or dangerous behaviors; or

(B) Three years experience with people with developmental disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(3) Social/sexual consultants providing specialized supports must:

(a) Have the education, skills, and abilities necessary to provide social/sexual consultation services; and

(b) Submit a resume to the Brokerage indicating at least one of the following:

(A) A bachelor's degree in Special Education, Psychology, Social Work, Counseling or other behavioral science field and at least one year of experience with people with developmental disabilities; or

(B) Three years experience with people with developmental disabilities who present social or sexual issues and at least one year of that experience must include providing the services of a social/sexual consultant.

(4) Nursing consultants providing specialized supports must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to the Brokerage indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law, including at least one year of experience with people with developmental disabilities.

(5) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual and developing cost-effective plans that will make the home safe and accessible for the individual.

(6) Environmental accessibility adaptation providers must be building contractors licensed as applicable under either OAR Chapter 812, Construction Contractor's Board, or OAR chapter 808, Landscape Contractors.

(7) Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Social workers licensed under ORS 675.530;

(c) Counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

(8) Dietitians providing specialized diets must be licensed according to ORS 691.415 through 691.465.

Stat. Auth.: ORS 409.050 & 410.070

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

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1900, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05

### 411-340-0170

#### Standards for Provider Organizations Paid with Support Services Funds

(1) Provider Organizations with current license or certification. A provider organization's license under OAR chapter 411, division 325 for 24-Hour Residential Programs or OAR chapter 411, division 360 for Adult Foster Homes or certified under OAR chapter 411, division 345, Employment and Alternative to Employment Services, or OAR 309-041-0550 through 309-041-0830, Supported Living Services, may not require additional certification as an organization to provide respite, supported employment, community living, community inclusion, or emergent services.

(a) Current license or certification may be considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, train qualified staff;

(B) Provide services according to Individual Support Plans; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(b) Provider organizations must assure that all individuals directed by the provider organization as employees, contractors, or volunteers to provide services paid for with support services funds meet standards for qualification of independent providers outlined in OAR 411-340-0160.

(c) Provider Organizations developing new sites, owned or leased by the Provider Organization, that are not reviewed as a condition of the current license or certification and where individuals are regularly present and receiving services purchased with support services funds, must meet the conditions of OAR 411-340-0170(2)(f) in each such site.

(2) Provider Organizations requiring certification under OAR chapter 411, division 340. A Provider Organization without current license under OAR chapter 411, division 325 for 24-Hour Residential Programs or OAR chapter 411, division 360 for Adult Foster Homes or current certification under OAR chapter 411, division 345, Employment and Alternative to Employment, or OAR 309-041-0550 through 309-041-0830, Support Living Services, must be certified as a provider organization according to these rules prior to selection for providing services listed in OAR 411-340-0130(6)(a) through (p) and paid for with support services funds.

(a) Basic policies and procedures required. The provider organization must develop and implement policies and procedures required for administration and operation in compliance with these rules, including, but not limited to:

(A) Policies and procedures required in OAR 411-340-0040 through 411-340-0090 related to abuse and unusual incidents, inspections and investigations, grievances and appeals, personnel policies and practices, records, and variances.

(B) Individual rights. The program must have and implement written policies and procedures that:

(i) Provide for individual participation in selection, training, and evaluation of staff assigned to provide the individual's services;

(ii) Protect individuals during hours of service from financial exploitation that may include, but is not limited to: staff borrowing from or loaning money to individuals; witnessing wills in which the staff or provider organization is beneficiary; or adding the staff member or provider organization name to the individual's bank account(s) or other personal property without approval of the individual or individual's legal representative; and

(C) Policies and procedures appropriate to scope of service, including but not limited to those required to meet minimum standards set forth in (OAR) 411-340-0170(2)(f) through (k) and consistent with written service agreements for individuals currently receiving services.

(b) Written service agreement. The provider organization must develop a written service agreement with the individual or individual's legal representative and must deliver services according to that agreement. The written service agreement must be consistent with the individual's ISP and must describe at minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services, and expected outcomes of services; and

(C) Any specific individual health, safety and emergency procedures that may be required, including action to be taken if an individual is unable to provide for his or her own safety and is missing while in the community under the care of the provider agency.

(c) Individual Records. The program must maintain a current record for each individual receiving services. The record must include:

(A) The individual's name, current home address, and home phone number;

(B) Current written service agreement, signed and dated by the individual or individual's legal representative;

(C) Contact information for the legal representative and any other persons designated by the individual or individual's representative to be contacted in case of incident or emergency;

(D) Contact information for the Support Services Brokerage assisting the individual to obtain services; and

(E) Records of service provided, including type of services, dates, hours, and personnel involved.

(d) Staff, contractors, or volunteers who provide services to individuals must meet independent provider qualifications in OAR 411-340-0160. Additionally, those staff, contractors or volunteers must have:

(A) Current CPR and first aid certification, obtained from a recognized training agency prior to working alone with an individual; and

(B) Written documentation of a TB test within two weeks of being engaged by the provider organization to provide services.

(e) General training requirements. The provider organization must ensure that employees, contractors, and volunteers receive training appropriate to scope of the provider organization's services.

(f) Additional standards for services provided in provider organization owned or leased site. Provider organizations that own or lease sites, provide services to individuals at those sites, and regularly have individu-

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als present and receiving services at those sites must meet the following minimum requirements:

(A) Written Plan. A written emergency plan must be developed and implemented and must include instructions for staff and volunteers in the event of fire, explosion, accident, or other emergency including evacuation of individuals served.

(B) Posting of emergency information.

(i) The telephone numbers of the local fire, police department and ambulance service, or "911" service where available, must be posted by designated telephone(s); and

(ii) The telephone numbers of the Provider Organization Director, and other persons to be contacted in case of emergency must be posted by designated telephone(s).

(C) Quarterly safety review. A documented safety review must be conducted quarterly to ensure that the service site is free of hazards. These reports must be kept in a central location by the Provider Organization for three years.

(D) Emergency evacuations. The support agency must train all individuals when they begin attending the service site to leave the site in response to an alarm or other emergency signal and to cooperate with assistance to exit the site.

(i) Each support agency must conduct an unannounced evacuation drill each month when individuals are present;

(ii) Exit routes must vary based on the location of a simulated fire.

(iii) Any individual failing to evacuate the service site unassisted within the established time limits set by the local fire authority for the site must be provided specialized training or support in evacuation procedures.

(iv) Written documentation must be made at the time of the drill and kept by the support agency for at least two years following the drill. It must include:

(I) The date and time of the drill;

(II) The location of the simulated fire;

(III) The last names of all individuals and staff present at the time of the drill;

(IV) The amount of time required by each individual to evacuate if the individual needs more than the established time limit; and

(V) The signature of the staff conducting the drill.

(v) In sites providing services to individuals who are medically fragile or have severe physical limitations, requirements of evacuation drill conduct may be modified. The modified plan must:

(I) Be developed with the local fire authority, the individual or individual's legal representative, and the provider organization director; and

(II) Be presented as a variance request per OAR 411-340-0090.

(E) Adaptations required for sensory or physically impaired. The support agency must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

(F) Health and safety inspections. The provider organization must assure that at least once every three years health and safety inspection(s) are conducted.

(i) The inspection(s) must cover all areas and buildings where services are delivered to individuals, administrative offices and storage areas.

(ii) The inspection(s) must be performed by: the Oregon Occupational Safety and Health Department; the service's worker's compensation insurance carrier; or an appropriate expert such as a licensed safety engineer or consultant as approved by the Department; and the Oregon Health Department, when necessary.

(iii) The inspection(s) must cover:

(I) Hazardous material handling and storage;

(II) Machinery and equipment used by the service;

(III) Safety equipment;

(IV) Physical environment; and

(V) Food handling, when necessary.

(iv) The documented results of the inspection, including recommended modifications or changes, and documentation of any resulting action taken must be kept by the provider for five years.

(G) Fire and Life Safety Inspections for Owned, Leased, or Rented Buildings and Property. The service provider must ensure that each service site has received initial fire and life safety inspections performed by the local fire authority or a Deputy State Fire Marshal. The documented results of the inspection, including documentation of recommended modifications or changes and documentation of any resulting action taken, must be kept by the provider for five years.

(H) Staffing requirements.

(i) Direct service staff must be present in sufficient number to meet health, safety, and service needs specified in the individual written agreements of the individuals present.

(ii) When individuals are present, staff must have the following minimum skills and training:

(I) At least one staff member on duty with CPR certification at all times;

(II) At least one staff member on duty with current First Aid certification at all times;

(III) At least one staff member on duty with training to meet other specific medical need(s) identified in the individual service agreement; and

(IV) At least one staff member on duty with training to meet other specific behavior intervention need(s) as identified in individual service agreements.

(g) Additional standards for assisting individuals with health and medical needs. Provider organizations providing services to individuals that involve assistance with meeting health and medical needs must:

(A) Develop and implement written policies and procedures addressing: emergency medical intervention; treatment and documentation of illness and health care concerns; administering, storing and disposing of prescription and non-prescription drugs including self administration, emergency medical procedures including the handling of bodily fluids, and confidentiality of medical records;

(B) Maintain a current written record for each individual receiving assistance with meeting health and medical needs that includes: health status; changes in health status observed during hours of service; any remedial and corrective action required and when such actions were taken if occurring during hours of service; and a description of any restrictions on activities due to medical limitations;

(C) If providing medication administration when the individual is unable to self-administer medications and there is no other responsible person present who can lawfully direct administration of medications, the provider organization must:

(i) Have a written order or copy of the written order, signed by a physician or physician designee, before any medication, prescription or non-prescription, is administered;

(ii) Administer medications per written orders;

(iii) Administer medications from containers labeled as specified per physician written order;

(iv) Keep medications secure and unavailable to any other individual and stored as prescribed; and

(v) Record administration on an individualized Medication Administration Record (MAR), including treatments and PRN, or "as needed", orders.

(vi) Not administer unused, discontinued, outdated, or recalled drugs

(D) If required to maintain a Medication Administration Record, the MAR must include:

(i) The name of the individual;

(ii) The brand name or generic name of the medication, including the prescribed dosage and frequency of administration as contained on physician order and medication;

(iii) Times and dates the administration or self-administration of the medication occurs;

(iv) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(v) Method of administration;

(vi) Documentation of any known allergies or adverse reactions to a medication;

(vii) Documentation and an explanation of why a PRN, or "as needed", medication was administered and the results of such administration; and

(viii) An explanation of any medication administration irregularity with documentation of administrative review by the provider organization director or designee.

(E) Safeguards to prevent adverse medications reactions must be utilized that include:

(i) Maintaining information about the effects and side-effects of medications the agency has agreed to administer;

(ii) Communicating any concerns regarding any medication usage, effectiveness or effects to the individual, individual's designee, or individual's legal representative; and Prohibiting the use of one individual's medications by another.

A record of visits to medical professionals, consultants or therapists if facilitated or provided by the service.



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(h) Additional standards for providing transportation. Provider organizations that own or operate vehicles that transport individuals must:

- (A) Maintain the vehicles in safe operating condition;
- (B) Comply with Department of Motor Vehicles laws;
- (C) Maintain insurance coverage on the vehicles and all authorized drivers; and

(D) Carry in vehicles a fire extinguisher and first aid kit.

(E) Assign drivers who meet applicable Department of Motor Vehicles requirements to operate vehicles that transport individuals.

(i) Additional standards for assisting an individual to manage personal funds. If assisting with management of funds, the provider organization must have and implement written policies and procedures related to the oversight of the individual's financial resources that include:

(A) Procedures that prohibit inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's funds for staff's own benefit, commingling an individual's personal funds with program or another individual's funds, or the program becoming an individual's guardian or conservator; and

(B) The program's reimbursement to the individual of any funds that are missing due to theft or mismanagement on the part of any staff of the program, or of any funds within the custody of the program that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

(j) Additional standards for assisting individuals to manage difficult behavior.

(A) Written policy. The provider organization must have and implement a written policy concerning behavior intervention procedures. The provider organization must inform the individual and individual's legal representative of the behavior intervention policy and procedures prior to finalizing the written service agreement.

(B) Any intervention to alter an individual's behavior must be based on positive behavioral theory and practice as defined by OAR 411-340-0020(52) and must be:

(i) Approved in writing by the individual or the individual's legal representative;

(ii) Described in detail in the individual's record.

(C) Psychotropic medications and medications for behavior must be:

(i) Prescribed by physician through a written order; and

(ii) Monitored by the prescribing physician for desired responses and adverse consequences; and

(k) Additional standards for supports that involve restraints.

(A) The provider organization must only employ physical restraint:

(i) As part of an ISP that meets OAR 411-340-0020(38);

(ii) As an emergency measure, but only if absolutely necessary to protect the individual or others from immediate injury; or

(iii) As a health-related protection prescribed by a physician, but only if necessary for individual protection during the time that a medical condition exists.

(B) Staff training. Provider organization staff members who need to apply restraint under an individual's service agreement must be trained by a Department-approved trainer and documentation of the training must be maintained in his or her personnel file.

(C) Physical restraints in emergency situations. Physical restraints in emergency situations must:

(i) Be only used until the individual is no longer a threat to self or others;

(ii) Be authorized by the agency provider director or designee, or individual's physician;

(iii) Be authorized within one hour of application of restraint;

(iv) Result in the immediate notification of the individual's designee or legal representative; and

(v) Prompt a review of the written service agreement, initiated by the agency provider, if used more than three times in a six month period.

(D) Physical restraint must be designed to avoid physical injury to the individual or others, and to minimize physical and psychological discomfort.

(E) Incident report. All use of physical restraint must be documented and reported according to procedures described in OAR 411-340-0040. The report must include:

(i) The name of the individual to whom the restraint is applied;

(ii) The date, type and length of time, of restraint application;

(iii) The name and position of the person authorizing the use of the restraint;

(iv) The name of the staff member(s) applying the restraint; and

(v) Description of the incident.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.348  
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1910, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05

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**Adm. Order No.:** SPD 9-2005

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**Notice Publication Date:** 6-1-05

**Rules Amended:** 411-034-0020, 411-034-0030, 411-034-0055, 411-034-0070

**Subject:** Chapter 411, Division 034, State Plan Personal Care Services, has been permanently amended, effective 07/01/05, to incorporate the following changes:

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

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

\* OAR 411-034-0030, requirements for eligibility were revised to clarify that an eligible client must require a paid personal care service identified in OAR 411-034-0020 to qualify for the program. Statements were also added to indicate that an individual whose personal care needs are met through their natural support system will not be eligible for the program. In addition, clients served under the Developmental Disabilities waiver programs, including Children's Intensive In-Home Services, are not eligible for State Plan Personal Care.

**Rules Coordinator:** Lynda Dyer—(503) 945-6398

## 411-034-0020

### Scope of Services

(1) Personal care services are essential supportive services performed by a qualified provider, which enable an individual to move into or remain in his or her own home. Services are provided directly to the client, and are not meant to provide respite or other services to the individual's support system. Services will not be implemented for the purpose of benefiting other family members or the household in general.

(2) The extent of the services may vary, but the number of hours is limited to twenty (20) hours of services per client per month. The services include:

(a) Basic personal hygiene — providing or assisting a person with such needs as bathing (tub, bed bath, shower), shampoo, hair grooming, shaving, nail care, foot care, dressing, skin care,

(b) Toileting, bowel and bladder care — assisting to and from bathroom, on and off toilet or commode, managing incontinence, bedpan, external cleansing of perineal area, external cleansing of Foley catheter, emptying catheter drainage bag, changing colostomy or ileostomy bag in stabilized situations, maintenance bowel care,

(c) Mobility, transfers, comfort — assisting with ambulation with or without assistive devices, repositioning of bed-bound or wheelchair-using individuals, encouraging active range-of-motion exercises, assisting with passive range-of-motion exercise, assisting with transfers with or without assistive devices,

(d) Nutrition — preparing nutritious meals, planning and preparing special diets, assuring adequate fluid intake, feeding,

(e) Medications and Oxygen — assisting with administration of medications, assuring medication is taken as ordered by physician, observing for reactions, reminding appropriate persons when prescriptions need to be refilled, maintaining clean oxygen equipment, assuring adequate oxygen supply, and

(f) Delegated nursing tasks.

(3) When any of the services listed in section (2)(a) to (f) of this rule are essential to the health and welfare of the client and the client is receiving a paid personal care service, the following supportive services may also be provided:

(a) Housekeeping tasks necessary to maintain the client in a healthy and safe environment,

(b) Arranging for necessary medical appointments,

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(c) Observation of client's status and reporting of any significant changes to physician or other appropriate person,  
(d) First aid and handling of emergencies, and  
(e) Extra support due to confusion, dementia, mental illness, or other cognitive deficits.

(4) Payment will not be made for any of the following services, which are excluded under these rules:

- (a) Shopping;
- (b) Transportation;
- (c) Mileage reimbursement;
- (d) Social companionship;
- (e) Day care, respite or baby-sitting services;
- (f) Pet care, grooming or feeding animals;
- (g) Yard work, gardening or home repair.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04; SPD 9-2005, f. & cert. ef. 7-1-05

## 411-034-0030

### Eligibility

(1) To be eligible for state plan personal care services under these rules, a person must require assistance from another person with one or more of the personal care services identified in 411-034-0020, section (2) (a) through (f).

(2) A person eligible for state plan personal care services under these rules must be a current recipient of at least one of the following programs: GA, EXT, MAA, MAF, OHP, OSIPM, TANF, or REF. These terms are defined in OAR 461-101-0010.

(3) Persons receiving services from a licensed residential service program that provides ADL care, such as the services received by residents of a foster home, assisted living facility, group home, or other residential care program are not eligible to receive state plan personal care services under these rules.

(4) Personal care services are not available for persons in a prison, hospital, sub-acute care facility, nursing facility, or other medical institution.

(5) Payment for personal care services is provided for a person needing the service when authorized by the Department or its designee in accordance with a plan of care.

(6) Care plans will be based upon the least costly means of providing adequate care. Payment for personal care services is not intended to replace the resources available to a client from their natural support system of relatives, friends, neighbors, or other community resources. An individual whose personal care needs are met through their natural support system will not be eligible for the program. Personal care services are not intended to replace routine care commonly needed by an infant or child typically provided by a parent. Additionally, they should not be used to replace other governmental services.

(7) Clients served under the Title XIX 1915(c) Home and Community-Based Services waiver for the aged and physically disabled, or the 1115(c) Independent Choices waiver, are not eligible to receive personal care services under the state plan.

(8) Clients served under a Title XIX 1915(c) Home and Community Based Services waiver for persons with mental retardation or developmental disabilities are not eligible to receive personal care services under the state plan.

(9) Clients receiving medical and long-term care services through the Program of All-inclusive Care for the Elderly (PACE), as described in OAR 411-045-0000 through 411-045-0140, must not also receive personal care services under these rules.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04; SPD 9-2005, f. & cert. ef. 7-1-05

## 411-034-0055

### Personal Care Attendant Enrollment Standards

(1) The Department may deny or terminate a Personal Care Attendant's provider enrollment and provider number if the Personal Care Attendant:

- (a) Has an unacceptable criminal history as defined in OAR chapter 410, division 007;
- (b) Lacks the skills, knowledge, or ability to adequately or safely perform the required work;
- (c) Violates protective service and abuse rules in OAR chapter 411, division 020, or OAR 413, Division 015;

(d) Commits fiscal improprieties;  
(e) Fails to provide the authorized services required by the client;  
(f) Has been repeatedly late in arriving to work or has absences from work not authorized in advance by the client;

(g) Has been intoxicated by alcohol or drugs while providing authorized services to the client or while in the client's home;

(h) Has manufactured or distributed drugs while providing authorized services to the client or while in the client's home; or

(i) Has been excluded as a provider by the Department of Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare or any other federal health care programs.

(2) A Personal Care Attendant may appeal in writing to the Administrator of the Personal Care Program to contest the Department's decision to terminate their provider enrollment and provider number. The Administrator, or their designee, will review the termination and notify the Personal Care Attendant of their decision. The Department will not refer the appeal to the Office of Administrative Hearings (described in OAR 137, Division 003).

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04; SPD 9-2005, f. & cert. ef. 7-1-05

## 411-034-0070

### Quality Assurance, Assessment, Authorization, and Monitoring

(1) This rule details quality assurance responsibilities in the assessment, case planning, prior authorization of payment for services, and on-going monitoring of a care plan as performed by case managers, registered nurses, or other persons designated by the Department or interagency agreement to perform similar activities.

(2) Case Manager Quality Assurance Responsibilities:

(a) Assessment: The case manager or designated person will assess the service needs of the client by identifying services the client is currently eligible for, services currently being provided, and resources meeting any, some, or all of the person's needs. The case manager will interview the client and, if appropriate, other interested persons to assess the client's ability to perform the tasks listed in OAR 411-034-0020.

(b) Prior Authorization: Payment for personal care services must be prior authorized by the Department or its designee based on these rules, the service needs of the client as documented in the written care plan, and the cost effectiveness of the proposed services. If a client is served by a Department designee that does not provide, assessment, planning and authorization of personal care services, then the local Seniors and People With Disabilities (SPD) or the Area Agency on Aging (AAA) office will be responsible for case planning and service payment authorization.

(c) Case Planning:

(A) The case manager will prepare a care plan identifying those tasks for which the client requires assistance and the monthly number of authorized hours of service. The case manager will document the natural supports that currently address some or all of those assistance needs.

(B) The care plan will describe the tasks to be performed by the qualified provider and will authorize the maximum number of hours that can be reimbursed for those services.

(d) Nursing Referral: The case manager or designee may refer a registered nurse (RN) for nursing assessment and monitoring when it appears the client may need services requiring RN monitoring or delegation under the Oregon State Board of Nursing, Nurse Delegation Rules (OAR chapter 851 division 47). Indicators of the need for RN assessment and monitoring include:

(A) Medical instability, as demonstrated by frequent emergency care, physician visits or hospitalizations;

(B) Potential for skin breakdown or pressure ulcers;

(C) Multiple health problems or frailty with a strong probability of deterioration;

(D) Potential for increased self-care, but instruction and support for the client are needed to reach goals; or

(E) Complex medication regimen including PRN prescribed medications, use of psychoactive medications insulin or blood-thinning medication with frequent lab work.

(e) On-going Monitoring and Authorization: The case manager will meet with the client and, when appropriate, interested parties at least once every 365 days to review the client's service needs. The case manager will review the cost effectiveness of the plan, and will authorize a new service plan, if appropriate, based on the client's current service needs.

(3) Registered Nurse Quality Assurance Responsibilities:

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(a) Assessment: The registered nurse will assess the need of each client if referred by the case manager, or designee for medically-related services to assist with tasks listed in OAR 411-034-0020,

(b) Nursing Care Plan:

(A) The nursing care plan must comply with the Nurse Practice Act, Oregon Revised Statutes 678.010 to 678.410, and the Oregon State Board of Nursing Administrative Rules chapter 851, divisions 045 and 047.

(B) The nursing care plan will be reviewed with the client, the provider and the case manager prior to implementation. The plan will indicate the interventions needed, the expected outcomes of care and the schedule of authorized nursing visits. The frequency of review will be based on the client's need, but the plan will be reviewed at least every 180 days. A copy of the nursing care plan must be included in the referring case manager's case plan file.

(c) Maximum hours and hourly rates for contracted nurse services are established by the Department.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04;

SPD 9-2005, f. & cert. ef. 7-1-05

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**Adm. Order No.:** SPD 10-2005

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**Rules Amended:** 411-031-0020, 411-031-0040

**Subject:** Amendments to Chapter 411, Division 031 - Changes were made to the definitions section of the rule including the addition of "manufacturing and distributing drugs while providing authorized services or while in the client's home" to the definition for "Violation of a drug-free workplace."

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

Other changes were made to OAR 411-031-0040 to reflect that each live-in HCW who is the only live-in HCW in the plan will receive 24 hours per month in paid leave. Previously, the rule indicated the provider had to be the only provider, not the only live-in provider to earn 24 hours of paid leave per month. An additional clarification was made including that paid leave cannot be cashed out.

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

**Rules Coordinator:** Lynda Dyer—(503) 945-6398

## 411-031-0020

### Definitions

(1) "Activities of Daily Living" (ADL) means those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities may include eating, dressing/grooming, bathing/personal hygiene, mobility, bowel and bladder management, and cognition.

(2) "Adult Protective Services" means a service to be provided in response to the need for protection from harm or neglect to an aged, disabled, or blind person 18 years of age or older regardless of income, as described in 411-020-0000 through 411-020-0050.

(3) "Area Agency on Aging" (AAA) means the Department of Human Services (DHS) designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to the elderly and possibly the disabled in a planning and service area. For purposes of these rules, the term Area Agency on Aging (AAA) is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 through 410.300.

(4) "Burden of proof" means that the existence or nonexistence of a fact must be established by a preponderance of the evidence.

(5) "Business days" means Monday through Friday and excludes Saturdays, Sundays and state-sanctioned holidays.

(6) "Case Manager" means a person who ensures client entry, assessment, service planning, service implementation, and evaluation of the effectiveness of the services.

(7) "Client" means the individual eligible for in-home services.

(8) "Client-Employed Provider Program" (CEP) refers to the program wherein the provider is directly employed by the client and provides either hourly or live-in services. In some aspects of the employer/employee relationship, the Department of Human Services acts as an agent for the client-employer. These functions are clearly described in OAR 411-031-0040.

(9) "Companionship Services" means those services which are designated by the Department of Labor as meeting the personal needs of a client and which are exempt from federal and state minimum wage laws.

(10) "Contracted In-Home Care" means a service provided through a contractor, which consists of minimal or substantial assistance with activities of daily living and self-management tasks.

(11) "Contracted In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR 333-536-0000 through 333-536-0095 that provides hourly contracted in-home care to clients of the Department or Area Agency on Aging.

(12) "Department" means the Department of Human Services, Seniors and People with Disabilities.

(13) "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(14) "Fiscal Improprieties" means the Homecare Worker committed financial misconduct involving the client's money, property or benefits. Improprieties include, but are not limited to, financial exploitation, borrowing money from the client, taking the client's property or money, having the client purchase items for the Homecare Worker, forging the client's signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(15) "General Household Work" means, according to federal law, housecleaning, chore services, and other household tasks.

(16) "Homecare Worker" (HCW) means a provider, as described in OAR 411-031-0020 and 411-031-0040, who is directly employed by the client and provides either hourly or live-in services to eligible clients. The term Homecare Worker includes providers in the Spousal Pay Program, Independent Choices Program providers and Personal Care Attendants enrolled through Developmental Disability Services or Mental Health Services are excluded from the term Homecare Worker.

(17) "Hourly Services" means the in-home services, including activities of daily living and self-management tasks, which are provided at regularly scheduled times.

(18) "Imminent Danger" means there is reasonable cause to believe a person's life or physical well-being is in danger if no intervention is initiated immediately.

(19) "In-Home Services" means those services that assist a client to stay in his/her own home.

(20) "Lack of skills, knowledge and ability to adequately or safely perform the required work" means the Homecare Worker does not possess the skills to perform services needed by Department clients. The Homecare Worker may not be physically, mentally, or emotionally capable of providing services to seniors and persons with disabilities. Their lack of skills may put clients at risk, because they fail to perform, or learn to perform, their duties adequately to meet the needs of the client.

(21) "Live-In Services" means those Client-Employed Provider Program services provided when a client requires ADL, self-management tasks, and twenty-four hour availability. Time spent by any live-in Homecare Worker doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements under the Companionship Services definition outlined in this rule. To ensure continuity of care for the client, live-in service plans must include at least one HCW providing 24-hour availability for a minimum of five (5) days in a calendar week.

(22) "Minimal Assistance" means the client is able to perform a majority of a task, but requires some assistance.

(23) "Office of Administrative Hearings" means the panel established within the Employment Department under section 9, chapter 849, Oregon Laws, 1999, that conducts contested case proceedings and other such duties on behalf of designated state agencies.

(24) "Oregon Project Independence" (OPI) means the program of in-home services defined in OAR chapter 411, division 032.

(25) "Preponderance of the evidence" means that one party's evidence is more convincing than the other party's.

(26) "Provider" means the individual who actually renders the service.

(27) "Provider enrollment" means a Homecare Worker's authorization to work as a provider employed by the client, for the purpose of receiving



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ing payment for authorized services provided to Department clients. Provider enrollment includes the issuance of a provider number.

(28) "Provider number" means an identifying number, issued to each Homecare Worker who is enrolled as a provider through the Department.

(29) "Provider Payments Unit" means the Seniors and People With Disabilities unit responsible for processing provider number requests.

(30) "Self-Management" means those activities, other than activities of daily living, required by an individual to continue independent living; i.e., medication and oxygen management, transportation, meal preparation, shopping, and client-focused housekeeping.

(31) "Seniors and People With Disabilities (SPD)" means the part of the Department of Human Services responsible for rules and policy for programs associated with seniors and persons with disabilities.

(32) "Services are not provided as required," means the Homecare Worker does not provide the services to the client as described in the service plan authorized by the Department.

(33) "Twenty-Four Hour Availability" means the availability and responsibility of a Homecare Worker to meet Activities of Daily Living and self-management needs of a client as required by that client over a twenty-four hour period. These services are provided by a live-in Homecare Worker and are exempt from federal and state minimum wage and overtime requirements.

(34) "Unacceptable conduct at work" means the Homecare Worker has repeatedly engaged in one or more of the following behaviors: delay in their arrival to work or absences from work not prior-scheduled with the client, which are either unsatisfactory to the client or which neglect the client's care needs; or inviting unwelcome guests or pets into the client's home, which results in the client's dissatisfaction or inattention to the client's required care needs.

(35) "Unacceptable criminal history" means that a criminal history check and fitness determination have been conducted pursuant to Administrative Rules 410, Division 007, finding the Homecare Worker unfit.

(36) "Violation of a drug-free workplace" means there was a substantiated complaint against the Homecare Worker being intoxicated by alcohol or drugs while responsible for the care of the client, while in the client's home, or while transporting the client, or manufacturing or distributing drugs while providing authorized services to the client or while in the client's home.

(37) "Violations of Protective Service and abuse rules" means the Homecare Worker violated protective service and abuse rules as described in 411-020-0002, Section 1. Abuse includes physical assault, use of inappropriate or derogatory language, financial exploitation, inappropriate sexual advances, neglect of care, and denying medical care or treatment. Abuse also includes the use of medications or physical restraints when used to discipline the client or for the convenience of the provider.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05

## 411-031-0040

### Client-Employed Provider Program

The Client-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes that the provider will be required for activities of daily living and self-management tasks and twenty-four hour availability. The hourly structure assumes that the provider will be required for activities of daily living and self-management tasks during specific substantial periods. Except as indicated, all of the following criteria apply to both structures:

(1) Employment Relationship: The relationship between the provider and the client is that of employee and employer.

(2) Job Descriptions: Each client/employer, in cooperation with the case manager, or if present, contracted Registered Nurse, may create a job description for the potential employee. Such descriptions will make it clear that general household work will comprise less than 20% of the live-in employee's time.

(3) Homecare Worker Liabilities: The only benefits available to Homecare Workers are those negotiated in the collective bargaining agreement between the Home Care Commission and the Service Employee's International Union, Local 503, OPEU. This agreement does not include participation in the Public Employees Retirement System (PERS) or the Oregon Public Service Retirement Plan (OPSRP). Homecare Workers are not state employees.

(4) Interruption of Services

(a) When a client is absent from the home due to an illness or medical treatment and is expected to return to the home, a live-in provider, who is the only live-in provider for a client, may be retained to ensure his/her presence upon the client's return or to maintain the client's home for up to 30 days at the rate of pay immediately preceding the client's absence. Spousal Pay Providers are not eligible for payment during a client absence.

(b) The required meals and lodging expenses of the provider, while providing these services fifty miles or more from the client's residence, will be covered. Such expenses, including mileage allowed under Section (11) of this rule, will be covered by the Office of Medical Assistance Programs, whenever possible.

(5) Selection of Homecare Worker: The client carries primary responsibility for locating, interviewing, screening, and hiring his/her own employees. The right to employ the individual of his/her choice stands without regard to any limitations established by the legislature or federal government, except for Bureau of Citizenship and Immigration Services Rules.

(6) Employment Agreement: The client/employer retains the full right to establish the employer/employee relationship at any time after Bureau of Citizenship and Immigration Services papers have been completed and identification photocopied. The Department will not guarantee payment for those services until all acceptable enrollment standards have been verified and both the employer and Homecare Worker have been formally notified in writing that payment by the Department is authorized.

(7) Termination of Employment: Terms of dismissal or resignation notice are the sole responsibility of the employer to establish at the time of employment.

(8) Provider Enrollment

(a) Enrollment Standards: A Homecare Worker must meet all of the following standards to be enrolled with the Department's Client-Employed Provider Program:

(A) The Homecare Worker must maintain a drug-free work place.

(B) The Homecare Worker must have an acceptable criminal history as defined in OAR chapter 410, division 007.

(C) The Homecare Worker must have the skills, knowledge, and ability to perform, or to learn to perform the required work.

(D) The Homecare Worker's U.S. employment authorization must be verified.

(E) The Homecare Worker must be 18 years of age or older. DHS Central Office may approve limited enrollment, as described in (8)(d) of this rule, for a Homecare Worker who is at least sixteen years of age.

(F) The Homecare Worker must complete an orientation as described in Section (8)(e) of this rule.

(b) The Department may deny an application for provider enrollment in the Client-Employed Provider Program when:

(A) The applicant has a history of violating protective service and abuse rules;

(B) The applicant has committed fiscal improprieties;

(C) The applicant does not have the skills, knowledge or ability to adequately or safely provide services;

(D) The applicant has an unacceptable criminal history;

(E) The applicant is not 18 years of age;

(F) The applicant has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other Federal health care programs; or

(G) The Department has information that enrolling the applicant as a Homecare Worker would put vulnerable clients at risk.

(c) Criminal History Clearance Rechecks: Criminal history clearance re-checks will be conducted at least every other year from the date the Homecare Worker is enrolled. Re-checks may be conducted at the discretion of the Department/AAA.

(d) Limited enrollment: SPD/AAA may approve a limited enrollment for a Homecare Worker to provide services exclusively to a client or to specific clients. Generally, limited enrollment would be approved for Homecare Workers providing services exclusively to clients who are family members, friends or neighbors. To be authorized to work for clients in general, a Homecare Worker must complete a criminal history clearance re-check.

(e) Homecare Worker Orientation: Homecare Workers must participate in an orientation arranged through an SPD/AAA office. The orientation should occur within the first 30 days after becoming enrolled in the Client-Employed Provider Program and prior to beginning work for any specific SPD/AAA clients. When completion of an orientation is not possible within those timelines, orientation must be completed within 90 days of being enrolled. If a Homecare Worker fails to complete an orientation with-

## ADMINISTRATIVE RULES

in 90 days of provider enrollment, their provider number will be inactivated and any authorization for payment of services will be discontinued.

(f) A Homecare Worker's provider enrollment may be inactivated when:

(A) The Homecare Worker has not provided any paid services to any client in the last twelve months;

(B) The Homecare Worker fails to complete a criminal history clearance authorization requested by the Department;

(C) The Homecare Worker informs the Department they will no longer be providing Homecare Worker services in Oregon; or

(D) A complaint is being investigated against a Homecare Worker who, at the time, is not providing any paid services to clients.

(9) Paid Leave

(a) Live-in Home Care Workers: The Department will authorize one twenty-four hour period of leave each month when a live-in Homecare Worker or Spousal Pay Provider is the only live-in provider during the course of a month. For any part of a month worked, the live-in Homecare Worker will receive a proportional share of that twenty-four hour period of leave authorization. A prorated share of the 24 hours will be allocated proportionately to each live-in when there is more than one live-in provider for a client.

(A) Accumulation and Usage: A provider may not accumulate more than 144 hours of accrued leave. The employer, Homecare Worker, and case manager will coordinate the timely use of these hours. Usage may be in one-hour increments. Accrued leave must be taken while employed as a live-in.

(B) Transferability of Paid Leave: The Homecare Worker retains the right to earned paid leave when terminating employment with one employer, so long as the Homecare Worker is employed with another employer as a live-in within one year of termination. Paid leave cannot be cashed out.

(b) Hourly Homecare Workers: On July 1st of each year, active Homecare Workers who worked eighty (80) authorized and paid hours in any one (1) of the three (3) previous months of active employment will be credited with one eight (8) hour block of paid leave to use during the current fiscal year (July 1 through June 30). One eight (8) hour block of paid leave will be credited to each eligible Homecare Worker, irrespective of the number of clients they serve. Such leave will not be cumulative from year to year. Such time off must be utilized in one (1) eight (8)-hour block subject to authorization. If the Homecare Worker's normal workday is less than eight (8) hours, such time off may be utilized in blocks equivalent to the normal workday. Any remaining hours that are less than the normally scheduled workday may be taken as a single block. If the leave hours are not used within the fiscal year, the balance will be reduced to zero (0). Homecare Workers will not be compensated for paid leave unless the time off work is actually taken. Hourly paid leave cannot be cashed out.

(10) Department Fiscal and Accounting Responsibility:

(a) Direct Service Payments: The Department will make payment to the provider on behalf of the client for all in-home services. This payment will be considered full payment for the services rendered under Title XIX. Under no circumstances is the Homecare Worker to demand or receive additional payment for these Title XIX-covered services from the client or any other source. Additional payment to Homecare Workers for the same services covered by Oregon's Title XIX Home and Community Based services waiver is prohibited.

(b) Timely Submission of Claims: In accordance with OAR 410-120-1300, all claims for services must be submitted within 12 months of the date of service.

(c) Ancillary Contributions:

(A) FICA: Acting on behalf of the Client/Employer, the Department will apply any applicable FICA (Federal Insurance Contributions Act) regulations and will:

(i) Withhold the provider/employee contribution from payments;

(ii) Refund previously withheld amounts when it is determined the provider/employee is not subject to withholdings; and

(iii) Submit the Client/Employer contribution and the amounts withheld from the provider/employee to the Social Security Administration.

(B) Benefit Fund Assessment: The Workers' Benefit Fund assessment pays for programs that provide direct benefits to injured workers and their beneficiaries and that assist employers in helping injured workers return to work. The Department of Consumer & Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. DHS calculates the hours rounded up to the nearest whole hour and deducts an amount rounded up to the nearest cent. Acting on behalf of the Client/Employer, the Department will:

(i) Deduct the employee/providers' share of the Benefit Fund Assessment rate for each hour or partial hour worked by each paid Homecare Worker.

(ii) Collect the client/employer's share of the Benefit Fund Assessment for each hour or partial hour of paid services received.

(iii) Submit the client and provider's contributions to the Workers' Benefit Fund.

(C) The Department will pay the employer's share of the Unemployment Tax.

(d) Ancillary Withholdings. For purposes of Section (10)(c) of this rule, "labor organization" means any organization that has, as one of its purposes, representing employees in their employment relations.

(A) The Department will deduct from the provider's monthly salary or wages the specified amount for payment to a labor organization.

(B) In order to receive this payment, the labor organization must enter into a written agreement with the Department to pay the actual administrative costs of the deductions.

(C) The Department will pay the deducted amount monthly to the designated labor organization.

(e) State and Federal Income Tax Withholding

(A) The Department will withhold state and federal income taxes on all payments to Homecare Workers, as indicated in the Home Care Commission's collective bargaining agreement with the Service Employee's International Union.

(B) Homecare Workers must complete and return a current Internal Revenue Service (IRS) W-4 form to the local office. The Department will apply standard income tax withholding practices in accordance with the Code of Federal Regulations, Title 26, Part 31 (26 CFR 31).

(11) Homecare Worker Expenses Secondary to Performance of Duties

(a) Providers may be reimbursed at the published state mileage rate when they use their own car for service plan related transportation, if prior authorized by the case manager. If unscheduled transportation needs arise during non-office hours, an explanation as to the need for the transportation must be provided and approved prior to reimbursement.

(b) Medical transportation through the Office of Medical Assistance Programs (OMAP), volunteer transportation, and other transportation services included in the service plan will be considered a prior resource.

(c) DHS is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for OMAP or service plan-related transportation, except as may be covered by workers' compensation.

(12) Workers' Compensation and health insurance are available to eligible Homecare Workers as defined in the Home Care Commission's bargaining agreement with the Service Employee's International Union. In order to receive Homecare Worker services, the Client-Employer must provide written authorization and consent to the Department for the provision of workers' compensation insurance for their employee.

(13) Overpayments:

(a) An overpayment is any payment made to a Homecare Worker by the Department that is more than the person is authorized to receive.

(b) Overpayments are categorized as follows:

(A) Administrative Error Overpayment: Occurs when the Department failed to authorize, compute or process the correct amount of in-home service hours or wage rate.

(B) Provider Error Overpayment: Occurs when the Department overpays the Homecare Worker due to a misunderstanding, unintentional or intentional error.

(C) Fraud Overpayment: The Department of Justice, Medicaid Fraud Unit will determine when fraud has occurred and it has resulted in an overpayment.

(c) Overpayments are recovered as follows:

(A) Overpayments will be collected prior to garnishments, such as child support, IRS back taxes, and educational loans.

(B) Administrative or Provider Error Overpayments will be collected at no more than five percent (5%) of the Homecare Worker's gross wages.

(C) Fraud Overpayments: The Department of Justice, Medicaid Fraud Unit will determine when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) Providers no longer employed as Homecare Workers, will have any remaining overpayment deducted from their final check. The provider is responsible for repaying the amount in full when the final check is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05

# ADMINISTRATIVE RULES

## Department of Justice Chapter 137

**Adm. Order No.:** DOJ 5-2005

**Filed with Sec. of State:** 7-15-2005

**Certified to be Effective:** 7-15-05

**Notice Publication Date:** 5-1-05

**Rules Adopted:** 137-055-1700

**Rules Amended:** 137-055-1180, 137-055-2140, 137-055-3400, 137-055-4130, 137-055-5110, 137-055-5120, 137-055-5400, 137-055-6020

**Rules Ren. & Amended:** 137-055-6110 to 137-055-4455

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

**Rules Coordinator:** Shawn Irish—(503) 986-6240

### 137-055-1180

#### Confidentiality — Address of Record

(1) "Address of record" means an address provided by a party in a child support or paternity case to the administrator that may be an address other than the party's home address but is an address where the party can receive legal papers. The address of record may be released in writing to the other party during the pendency of a child support or paternity legal proceeding. The address of record will be used on all legal documents.

(2) A party may provide or amend an address of record to the administrator at any time the child support case is open.

(3) The Child Support Program will provide annual notice to parties that they may provide an address of record to the administrator at any time.

(4) The administrator will provide notice to parties of the opportunity to provide an address of record at the initiation of any legal action that requires the service of legal documents on a party or would cause the following to be shared with the other party as part of the legal action:

- (a) Home, mailing or contact address;
- (b) Social security number;
- (c) Telephone number;
- (d) Driver license number;
- (e) Employer's name, address and telephone number.

(5) The administrator will maintain the address of record on the case record.

(6) If a party has provided an address of record and the address is more than six months old, the administrator will provide the party with notice and opportunity to update the address of record prior to initiating any legal action.

(7) An address of record may be any place that a party can receive mail but must be located within the same state as the party's home.

(8) An address of record shall be documented on the case record and will remain in force until such time as a party may retract the address of record in writing.

(9) When a party provides an address of record during a hearing, a final order issued under OAR 137-003-0665 must include a notation of the address of record.

(10) Notwithstanding the provisions of section (8), when documents sent to a party's address of record are returned because the address of record is not valid, the administrator shall use, in order of preference, the party's mailing, contact or residence address as the address of record. The administrator shall notify the party that such address may be released to the other party(ies), and inform the party that a new address of record may be submitted.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.011, 25.020, 25.080 & 25.085

Hist.: AFS 23-1998, f. & cert. ef. 11-2-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0292; AFS 5-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1180; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1180; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 5-2005, f. & cert. ef. 7-15-05

### 137-055-1700

#### Division of Child Support as Garnishee – Service of Writ

Pursuant to ORS 18.655(1)(f); the Department of Justice, Division of Child Support, designates the Special Collections Unit, 1495 Edgewater NW, Suite 120, Salem, Oregon 97304, as the authorized office to receive service or delivery of a writ of garnishment for property of a debtor with regard to child support or spousal support payments. Service or delivery of a writ of garnishment at an office or address other than the one designated in this rule will not be considered valid.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 18.655

Hist.: DOJ 5-2005, f. & cert. ef. 7-15-05

### 137-055-2140

#### Delegations to Administrative Law Judge

Administrative law judges of the Office of Administrative Hearings are authorized to do the following:

(1) Issue final orders without first issuing proposed orders.  
(2) Issue final orders by default in cases described in OAR 137-003-0670, except in a case authorized by ORS 416.415 or as authorized in section (3). An administrative law judge is authorized to issue a final order by default in a case authorized by ORS 416.425(5) but not in any other case authorized by ORS 416.425.

(3) Issue final orders by default when the nonrequesting party fails to appear for a hearing conducted under ORS 25.020(13), or issue a dismissal with prejudice when the requesting party fails to appear for a hearing conducted under ORS 25.020(13).

(4) Determine whether a reschedule request should be granted pursuant to OAR 137-003-0670(2), based on whether the requester's failure to appear for a scheduled hearing was beyond the reasonable control of the party.

(5) Issue final orders granting or denying late hearing requests pursuant to OAR 137-003-0528.

(6) Provide to each party the information required to be given under ORS 183.413(2) or OAR 137-003-0510(1).

(7) Order and control discovery.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 180.345

Hist.: AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0801; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2140; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2140; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 5-2005, f. & cert. ef. 7-15-05

### 137-055-3400

#### District Attorney Case Assignment for Modification or Suspension of Support

(1)(a) The purpose of this rule is to provide criteria for determining which Oregon District Attorney will have responsibility for initiating action to review and modify an Oregon judgment, or administrative order, that requires payment of child support. This rule applies only when both of the following conditions exist:

(A) An Oregon District Attorney has responsibility for providing support enforcement services under ORS 25.080; and

(B) Either of the following is true:

(i) The obligor or obligee has requested a review and modification, as provided in OAR 137-055-3420, for purposes of changing the amount of the monthly support obligation; or

(ii) The obligor is presumed entitled to a suspension of the support obligation as a recipient of certain cash assistance, as provided in ORS 25.245.

(b) This rule does not apply to a Division of Child Support (DCS) office that is performing district attorney functions.

(2) For purposes of this rule, the following definitions apply:

(a) "Requesting party" means the party requesting the district attorney to review and modify the support obligation;

(A) The requesting party may be either the obligor or the obligee;

(B) An obligor deemed presumptively eligible for a suspension under ORS 25.245 shall be considered the "requesting party";

(b) "Non-requesting party" means whichever party, either the obligor or the obligee, that is not the party as defined in subsection (2)(a), above.



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(3) In any case where there are arrears, the district attorney responsible under OAR 137-055-2040 for enforcing the case will, if the support order is in another Oregon county, transfer in the order for review and modification under ORS 25.100.

(4) In any case where there are no arrears:

(a) If both the obligor and obligee reside in the same Oregon county, but the support order is in another county:

(A) The district attorney for the county of residence of the obligor and obligee will be responsible for review and modification action;

(B) The district attorney for the county of residence may transfer in the support order for review and modification under ORS 25.100, as the county of residence for the non-requesting party.

(b) If either the obligor or obligee reside in the same Oregon county that is the county of the support order, the district attorney for that county will be responsible for review and modification action;

(c) If the support order, the requesting party, and the non-requesting party are all in different counties:

(A) If the district attorney for the county of the requesting party has previously transferred the support order to the requesting party's county for enforcement, the district attorney for the enforcing county will be responsible for review and modification action;

(B) If the case is not currently open as an enforcement case under ORS 25.080, or if the district attorney for the requesting party's county has never transferred the support order for enforcement:

(i) That district attorney will refer the requesting party to the district attorney for the county of the support order;

(ii) The district attorney for the county of the support order will then be responsible for review and modification action;

(C) If the case is currently open as an enforcement case under ORS 25.080:

(i) The district attorney for the enforcing county will transfer the enforcement case to the district attorney for the county of the support order;

(ii) The district attorney for the county of the support order will then be responsible for review and modification action;

(iii) Once the review and modification is completed, the district attorney for the county of the support order will transfer the enforcement case back to the proper enforcement county under OAR 137-055-2040.

(5) If the requesting party does not reside in Oregon, and regardless of whether the case has arrears or not:

(a) If the requesting party's case is already being enforced, the administrator will advise the requesting party to direct the request to the child support program in that other state. The other state's child support program may then ask the administrator to pursue action under appropriate state and federal statutes;

(b) If the requesting party's support case is not being enforced under the child support program in another state, the administrator will handle the request under sections (3) and (4) of this rule.

(6) If the non-requesting party does not reside in Oregon, the district attorney will handle the request under sections (3) and (4) of this rule.

(7) The matrix set out in Table 1, is included in this rule as an aid, and incorporates preceding sections of this rule: [Table not included. See ED. NOTE.]

(8) Notwithstanding subsection (1)(b), all functions and responsibilities assigned to Oregon District Attorneys under this rule will also be considered assigned to DCS, for those counties where DCS has assumed responsibility from the district attorney for providing support enforcement services.

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

Stat. Auth.: ORS 180.320 - 360

Stats. Implemented: ORS 25.080 & 25.287

Hist.: AFS 33-1992, f. 11-17-92, cert. ef. 12-1-92; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0074; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3400; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3400; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 5-2005, f. & cert. ef. 7-15-05

## 137-055-4130

### Reduced Income Withholding

(1) The Department of Justice may set a lesser amount to be withheld if:

(a) Withholding is only for arrears, the obligor demonstrates the withholding is prejudicial to the obligor's ability to provide for a child the obligor has a duty to support; and, if arrears are owed to the obligee, the obligee agrees to a reduced withholding amount; or

(b) The child(ren) is currently in paid state care or custody and the state and the obligor agree in writing to a reduced amount of withholding when there is evidence that:

(A) The order to withhold is a barrier to reunification of the family or rehabilitation of the youth; or

(B) Is prejudicial to the obligor's ability to provide for another child the obligor has a duty to support.

(2) When the child(ren) is currently in paid state care or custody, DCS may submit an agreement for reduced income withholding to the Department of Human Services (DHS) child welfare program or the Oregon Youth Authority (OYA) for approval or denial.

(3) Upon receiving notice of an approval or denial of an agreement, DCS will notify the obligor. If the DHS child welfare program or OYA do not respond within 30 days of receiving an agreement, the agreement shall be deemed denied.

(4) If the agreement is approved, the agreement does not take effect until it has been signed by the obligor and returned to DCS.

(5) If the obligor does not agree with the agency's denial of an agreement, the obligor may file a grievance with the DHS child welfare program or OYA pursuant to OAR 413-010-0450 or 416-100-0070.

(6) A written agreement for a reduced amount of withholding may terminate and income withholding for the full amount allowable by law may be reinstated, unless the obligor otherwise qualifies for an exception pursuant to OAR 137-055-4080, when:

(a) The child(ren) leave(s) the care or custody of the state agency to which support has been assigned;

(b) According to the case record or as notified by the DHS child welfare program or OYA, the obligor is out of compliance with the agreement; or

(c) The time period covered by the agreement has expired.

Stat. Auth.: ORS 25.396 & 180.320 - 360

Stats. Implemented: ORS 25.396

Hist.: DOJ 14-2001, f. 12-28-01, cert. ef. 1-2-02, DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 137-050-0605; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 5-2005, f. & cert. ef. 7-15-05

## 137-055-4455

### Expiration of Support Judgment Remedies

(1) Child support awards entered on or after January 1, 1994: Judgment remedies for the child support award portion of a judgment, and any lump sum money award for unpaid child support installments, expire 25 years after the entry of the judgment that first establishes the support obligation.

(2) Child support awards entered prior to January 1, 1994: Judgment remedies for any amounts accrued under a child support award prior to January 1, 1984, are expired unless a renewal of judgment was filed. Judgment remedies for any amounts not expired on January 1, 1994 expire the later of:

(a) 25 years from the date of the judgment that first establishes the support obligation;

(b) 10 years after an installment comes due under the judgment and is not paid; or

(c) 10 years from the date of a judgment renewal.

(3) Notwithstanding any other provisions of this rule, when the child support judgment being enforced was issued by another state, the expiration of judgment under the laws of this state or of the issuing state, whichever is longer, applies.

(4) Spousal support judgments entered on or after January 1, 2004: Judgment remedies for any unpaid installment under the spousal support award portion of a judgment, expire the later of:

(a) 25 years after entry of the judgment that first establishes the support obligation; or

(b) 10 years after an installment comes due under the judgment and is not paid.

(5) Spousal support judgments entered prior to January 1, 2004: Judgment remedies for any unpaid installment under the spousal support award portion of a judgment, expire the later of:

(a) 25 years after entry of the judgment that first establishes the support obligation; or

(b) 10 years after an installment comes due under the judgment and is not paid; or

(c) 10 years from the date of a judgment renewal.

(6) The judgment remedies for a money award for child or spousal support expire by operation of law without any action required of a party.

(7) Notwithstanding the provisions of any rule, the expiration and extension of a judgment lien created by any money award for child or spousal support is as provided in OAR 137-055-4450.

(8) The Department of Justice, Division of Child Support (DCS) is the entity responsible for auditing for expiration of judgment remedies on cases receiving support enforcement services under ORS 25.080.

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(9) If an audit result is that the expired judgment amount is greater than the current arrears on the case, DCS will reduce the case arrears to zero.

(10) When an expiration of judgment audit is completed, DCS will notify the parties if there is any change to the arrears as a result of the audit. The notice must include:

(a) The current balance or zero, as appropriate, per section (9) of this rule;

(b) Information that a party may make a written request for an administrative review within 30 days of the notice.

(11) If a party requests an administrative review, DCS will:

(a) Conduct the administrative review within 45 days from the date of receiving the objection to verify the case was adjusted correctly and make any necessary corrections or adjustments as determined in the review;

(b) Notify both the obligee and the obligor, in writing, of the results of the review and of the right to appeal pursuant to ORS 183.484

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 18.180 - 18.195

Hist.: AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6110; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6110; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; Renumbered from 137-055-6110, DOJ 5-2005, f. & cert. ef. 7-15-05

## 137-055-5110

### Child Attending School Definitions

As used in OAR 137-055-5120 and 137-055-5125, the following terms have the meanings outlined below:

(1) "Child attending school" means a child of the parties who is unmarried, is 18 years of age or older and under 21 years of age and is a student regularly attending school. Unless the child otherwise qualifies as a child attending school, a child attending school does not include:

(a) A member of the Army, Navy, Air Force, Marine Corps, or Coast Guard (collectively known as the "armed forces") who is serving on active duty; or

(b) A member of the National Guard who is serving full-time National Guard duty.

(2) "Equivalent of a 'C' grade average or better" means:

(a) A cumulative "C" grade average or better; or

(b) A showing of satisfactory progress as defined by the institution if the institution does not use a traditional grading system; or

(c) If the child is still attending high school or a high school equivalency course, the child may have either a cumulative "C" grade average or better, or a "C" grade average or better for each term, semester or quarter after attaining age 18.

(3) "Normal break" means:

(a) Summer semester or term;

(b) The period of time between graduation from or completion of high school and the beginning of the next regularly scheduled term, semester, or course of study at a school;

(c) The period of time between the end and beginning of regularly scheduled consecutive school semesters, terms, or courses of study; or

(d) Any other scheduled break between courses of study that is defined by the school as a normal break.

(4) "Quarterly" means annual quarters ending on March 31, June 30, September 30, and December 31. This is the reporting schedule the Child Support Program may require for a child who is attending a school which does not have traditional terms or semesters, or has courses which last longer than six months.

(5) "Regularly attending" means the child is enrolled in an educational course load of at least half-time as defined by the school.

(6) "School" means any of the following:

(a) An educational facility such as a high school, community college, four-year college, or university;

(b) A course of vocational or technical training, including Job Corps, designed to fit the child for gainful employment;

(c) A high school equivalency course, including (but not limited to), a General Educational Development (GED) program; or

(d) A school in grade 12 or below, including home schooling.

(7) "Termination of official accounting functions" means the Division of Child Support shall cease to perform billing, accrual, distribution, and record-keeping functions for ongoing support with regard to the child attending school. If the order is a class order and there is an additional child(ren) for whom ongoing support is still ordered, termination of official accounting functions means:

(a) Any support paid directly to such child will cease and will be redirected to the obligee; and

(b) Support accrual for such child will be prorated to the other child(ren) for whom ongoing support is still ordered.

Stat. Auth.: ORS 25.020 & 180.345

Stats. Implemented: ORS 25.020 & 107.108

Hist.: AFS 23-2001, f. 10-2-01, cert. 10-6-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5110; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5110; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 5-2005, f. & cert. ef. 7-15-05

## 137-055-5120

### Support for Child Attending School — Oregon Orders Entered on or After October 4, 1997

(1) The purpose of this rule is to define how the Division of Child Support (DCS) will apply the provisions of ORS 107.108, regarding support or maintenance for a child attending school, in performing its official billing, accrual, distribution, and record-keeping functions for ongoing support when:

(a) The most recent order or modification for support was entered on or after October 4, 1997; and

(b) The order or modification provides for support until the child is age 21 so long as the child is a child attending school in accordance with ORS 107.108.

(2) The terms used in this rule shall have the meanings set out in OAR 137-055-5110.

(3) DCS will perform its official billing, accrual, distribution, and record-keeping functions for each child on a support obligation who qualifies as a child attending school after attaining age 18, unless the child:

(a) has failed to comply with the provisions set out in section (4) of this rule and the administrator has received a written objection from the obligor; or

(b) has failed to provide written notification as provided in section (7) of this rule.

(4) Beginning with the first full term or semester after the child attains age 18, or the first full term or semester after a pre-October 4, 1997, order is modified to include post October 4, 1997, provisions as set out in ORS 107.108, whichever occurs later:

(a) The child must submit the completed Child Support Program (CSP) Child Attending School Compliance Form to the obligor and to the administrator. The completed compliance form must be received by the obligor and the administrator within 30 calendar days from the first official day of classes for each term or semester. If the 30th day falls on a state holiday, a Saturday, or a Sunday, the compliance form must be received by the next working day. For schools which do not have traditional terms or semesters, or have courses which last longer than six months, the administrator may require that a compliance form be submitted "quarterly" in addition to within 30 calendar days from the first day of class.

(b) The child must maintain the equivalent of a cumulative "C" grade average or better as defined by the current school.

(c) The child must submit, to the obligor and to the administrator, copies of the grades for the last term or semester and a list of courses in which the child is currently enrolled;

(d) If there has been a finding and order of nondisclosure on behalf of the child pursuant to ORS 25.020, the child may send the obligor's copy of the documents to the administrator for the administrator to forward to the obligor. The child must submit a copy of the documents to the CSP per the time periods set out in subsection (a) of this section. The administrator will redact the following information prior to sending a copy of documents to the obligor:

(A) Residence, mailing or contact address including the school name and address;

(B) Social security number;

(C) Telephone number including the school telephone number;

(D) Driver's license number;

(E) Employer's name, address and telephone number; and

(F) Name of registrar or school official.

(5) Notwithstanding the form requirement of subsection (4)(a) of this rule, as of the Fall term or semester of 2002, the child may submit to the obligor and to the administrator, within the time frames set out subsection (4)(a) of this rule, the CSP Child Attending School Compliance Form with only the portion of the form "TO BE COMPLETED BY STUDENT/CHILD ATTENDING SCHOOL" completed, but the child must attach:

(a) An enrollment verification certificate from the school's contracted clearinghouse;

(b) Documentation from the school verifying grades of at least a cumulative "C" grade point average (or equivalent) as set out in subsection (4)(b) of this rule, such as:

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- (A) An official or unofficial transcript; or
  - (B) A report card which indicates a cumulative grade point average;
- and

(c) Copies of the grades for the last term or semester and a list of courses in which the child is currently enrolled.

(6) When a child is attending school and a "normal break" occurs between academic terms at the school, the obligor will continue to owe ongoing support and the DCS shall continue official accounting functions throughout such break if the case records show that the child intends to resume classes at the start of the first regular academic term following the break. The administrator may require the child to provide additional documentation if at least 120 days have passed since the end of the child's last term or semester.

(7) At least 30 days prior to the child's 18th birthday, the administrator will send written notification to the obligee, the child, and, if appropriate, the Oregon Youth Authority (OYA) that unless the obligee or the child sends written notification to the administrator prior to the child's 18th birthday that the child will continue to attend school, DCS will terminate official accounting functions effective the date the child attains age 18.

(8) Upon receipt of the written notification from the obligee or the child that the child will continue to attend school, the administrator will send the Child Attending School Compliance Requirements, along with a copy of the CSP Child Attending School Compliance Form, to the parties and the child. Such notice shall:

- (a) List all of the compliance requirements to continue to receive support as a child attending school;
- (b) Include objection information;
- (c) Advise the parties of their right to a change in circumstance modification in accordance with OAR 137-055-3420;
- (d) Include distribution information for distributing support directly to the child; and
- (e) Include information for the child to make a claim of risk for nondisclosure of information pursuant to ORS 25.020 and OAR 137-055-1160.

(9) DCS will distribute support directly to the child unless good cause is found to distribute support in some other manner. For purposes of this section "good cause" may include:

- (a) The child is in the care of the Oregon Youth Authority (OYA);
- (b) The child provides written authorization for distribution to the obligee;
- (c) The court, administrative law judge or administrator orders otherwise; or
- (d) The administrator is enforcing the Oregon order at the request of another state and that state has indicated they are unable to distribute support directly to the child.

(10) When there are multiple children for whom support is ordered, the amount paid directly to the child under section (9) of this rule will be a prorated share.

(11) If a child attending school is in the care of OYA, any and all reporting duties of the child as outlined in this rule will be the duty of OYA.

(12) DCS will terminate official accounting functions on the case when one of the following conditions occurs:

- (a) The obligee or child fails to provide written notification as required under section (7) of this rule;
- (b) The child has failed to comply with section (4) of this rule, and the obligor has submitted a written objection under section (15) of this rule;
- (c) During a normal school break, the child has failed to provide additional documentation as requested under section (6) of this rule;
- (d) The child sends written notice that the child no longer qualifies as a child attending school; or
- (e) The child fails to provide a valid compliance form within 30 calendar days from the date of a written notice from the administrator advising that an authorized representative of the school sent a written notice to the administrator that the child no longer qualifies as a child attending school.

(f) The child fails to provide a valid compliance form within 30 calendar days from the date of a written notice from the administrator advising that OYA has notified the administrator that the child is no longer in the care of the OYA.

(13) Once DCS terminates official accounting functions on the case, the official accounting functions cannot be resumed except as provided in section (16) of this rule.

(14) When the administrator receives written notification from the child or authorized representative of the school that the child no longer qualifies as a child attending school or notification from OYA that the child

is no longer in the care of OYA, the DCS will terminate official accounting functions on the case for any such child effective the date the notice is received by the administrator.

(15) If an obligor submits a written objection asserting that the child no longer is attending school, the administrator will review the official records for compliance. The administrator will presume that the child's statutory reporting requirements as outlined in section (4) of this rule have been fulfilled if the administrator has record of a completed compliance form with any required documentation for the current or most recent, as appropriate, term or semester.

(a) If compliance has occurred according to case records, the administrator will send a copy of the proof of compliance to the obligor. If there has been a finding and order of nondisclosure on behalf of the child pursuant to ORS 25.020, the administrator will redact the following information prior to sending a copy to the obligor:

- (A) Residence, mailing or contact address including the school name and address;
- (B) Social security number;
- (C) Telephone number including the school telephone number;
- (D) Driver's license number;
- (E) Employer's name, address and telephone number; and
- (F) Name of registrar or school official.

(b) If compliance has not occurred according to case records, DCS will terminate official accounting functions on the case for any such child effective the date the administrator receives the obligor's written objection and will notify all parties of this termination.

(16) Notwithstanding subsection (15)(b), up until the child attains the age of 21, as long as the child is still attending school, DCS will resume official accounting functions upon receipt of a written statement from the obligor that the obligor wishes to continue paying ongoing support for such child. If such verification occurs, DCS will inform all parties and resume its official accounting functions effective the payment due date following receipt of such verification. If the obligor later decides to stop paying ongoing support for such child, the obligor shall provide a written statement to the administrator and DCS will terminate official accounting functions on the case for any such child effective the date the administrator receives the obligor's written statement and will notify all parties of this termination.

(17) The administrator will honor the provisions of a court or administrative order to reinstate or terminate the duty of support to a "child attending school" under ORS 107.108.

(18) If the most recent order or modification for support cites ORS 107.108 or otherwise provides for support of a "child attending school," the administrator will follow the provisions of ORS 107.108 and this rule, regardless of other child attending school provisions that may be in the support order.

Stat. Auth.: ORS 25.020 & 180.345

Stats. Implemented: ORS 107.108

Hist.: AFS 21-1991, f. 10-23-91, cert. ef. 11-1-91; AFS 26-1991, f. 12-31-91, cert. ef. 1-1-92; AFS 9-1992, f. & cert. ef. 4-1-92; AFS 31-1992, f. 10-29-92, cert. ef. 11-1-92; AFS 18-1997(Temp), f. 9-23-97, cert. ef. 10-4-97; AFS 18-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0136; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 17-2002(Temp), f. 10-30-02, cert. ef. 11-1-02 thru 4-29-03; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5120; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 5-2005, f. & cert. ef. 7-15-05

## 137-055-5400

### Obligor Receiving Cash Assistance, Presumed Unable to Pay Child Support

(1) Cases for obligors receiving cash assistance as specified in ORS 25.245(1) from Oregon will be identified and processed as set forth in ORS 25.245. Obligor receiving cash assistance as specified in ORS 25.241(1) from another state or tribe must provide to the administrator written proof of receipt of such case assistance. The written proof must:

(a) Be provided by the obligor to the administrator to initiate suspension and every three months thereafter;

(b) Include the date the cash assistance payment was first made, the amount of the cash assistance for each and every month in which cash assistance was received, and the ending date, if known, of the cash assistance;

(c) Be official documentation, recognized by the issuing agency, that covers each and every month that cash assistance was received, including but not limited to a benefits award letter, deposit record or receipt.

(2)(a) When an obligor has provided written proof of receipt of cash assistance pursuant to section (1) of this rule, administrator will, subject to section (3) of this rule, credit the case for arrears accrued from the date the



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from 461-200-5400; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5400; DOJ 5-2005, f. & cert. ef. 7-15-05

obligor submitted written proof of receipt of cash assistance back to the date the cash assistance was first made, but not earlier than October 6, 2001;

(b) When an obligor notifies the administrator that the obligor is no longer receiving cash assistance, the administrator will begin accrual and billing pursuant to the support order currently in effect with the next support payment due following the end of the last month that the obligor received public assistance;

(c) If the obligor fails to provide written proof of receipt of cash assistance pursuant to section (1) of this rule, the administrator will begin accrual and billing pursuant to the support order currently in effect with the next support payment due for the month following the month for which the obligor last provided written proof;

(d) If the obligor provides written proof of receipt of cash assistance pursuant to section (1) of this rule after failing to provide timely written proof of receipt of cash assistance within three months, thereby causing the administrator to begin billing and accrual pursuant to subsection (c) of this section, support accrual may be suspended and arrears may be credited pursuant to subsection (a) of this section.

(3)(a) Within 30 days of receipt of information that the obligor is receiving cash assistance as specified in ORS 25.245(1), the administrator must send a notice to all parties to the support order. The notice will contain a statement of the presumption that support accrual ceases and include the following:

(A) A statement of the month in which cash assistance was first made;

(B) A statement that unless the party objects, that child support payments have ceased accruing beginning with the support payment due on or after the date the obligor began receiving cash assistance, but not earlier than:

(i) January 1, 1994, if the obligor received Oregon Title IV-A cash assistance, Oregon general cash assistance, Oregon Supplemental Income Program cash assistance or Supplemental Security Income Program payments by the Social Security Administration; or

(ii) October 6, 2001, if the obligor received Title IV-A cash assistance or general cash assistance from another state or Tribe;

(C) A statement that the administrator will continue providing enforcement services, including medical support enforcement, if applicable, and services to collect any arrears;

(D) A statement that if the obligor ceases to receive cash assistance as specified in ORS 25.245(1), accrual and billing will begin with the next support payment due following the end of the last month that the obligor receives cash assistance or for which the obligor provided written proof;

(E) A statement that any party may object to the presumption that the obligor is unable to pay support by sending to the administrator a written objection within 20 days of the date of service;

(F) A statement that the objections must include a written description of the resource or other evidence that might rebut the presumption of inability to pay; and

(G) A statement that the entity responsible for providing enforcement services represents the state and that low cost legal counsel may be available.

(b) Included with each notice under this section will be a separate form for the party to use if they choose to file an objection to the presumption that the obligor is unable to pay support.

(4) The notice under section (3) of this rule will be served on the obligee by personal service or by certified mail. The notice will be served upon the obligor by regular mail. The administrator will document the service of all parties to the support order on the case record, and include the date of service.

(5) Except as provided in subsections (a) and (b) of this section, an administrative law judge, or the court, may grant credit or satisfaction against arrears that accrue for the month or months the obligor receives cash assistance as specified in ORS 25.245(1), if the administrator has not suspended the accrual or credited the child support case. Credit or satisfaction may not be granted for months:

(a) Prior to January 1, 1994, if the obligor received Oregon Title IV-A cash assistance, Oregon general cash assistance, Oregon Supplemental Income Program cash assistance or Supplemental Security Income Program payments by the Social Security Administration; or

(b) Prior to October 6, 2001, if the obligor received Title IV-A cash assistance or general cash assistance from another state or Tribe.

Stat. Auth.: ORS 25.245 & Sec. 2, Ch. 73 OL 2003

Stats. Implemented: ORS 25.245

Hist.: AFS 4-1994, f. & cert. ef. 3-4-94; AFS 20-1998, f. & cert. ef. 10-5-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0120; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered

## 137-055-6020

### Application and Distribution of Support Payments

(1) For purposes of this rule, the following definitions apply:

(a) "Assistance" means cash assistance under Temporary Assistance for Needy Families (TANF) program, or foster care maintenance payments provided by the Department of Human Services (DHS), or cost of care provided by the Oregon Youth Authority (OYA).

(b) "Current support" is the monthly support amount ordered by a court or administrative process for the benefit of a child and/or a former spouse.

(c) "Family's conditionally-assigned arrears" is past-due support that accrues during non-assistance periods, and was not permanently assigned under pre-October 1997 assignments, which revert back to the family on either October 1, 2000, if the family terminates assistance prior to October 1, 2000, or on the date the family leaves the assistance program if on or after October 1, 2000. Family's conditionally-assigned arrears revert to state's temporarily-assigned arrears during periods that the family receives assistance.

(d) "Family's unassigned arrears" is past-due support which accrues after the family's most recent period of assistance, or at any time in the case where a family has never received assistance.

(e) "Family's unassigned arrears during assistance period" is past-due support which accumulates while a family receives assistance and exceeds the total amount of unreimbursed assistance paid to the family.

(f) "Future support" is an amount received which represents payment on current support for future months.

(g) "State's permanently-assigned arrears" is:

(A) Past-due support which accrues during the period the family receives assistance and past-due support which accrued before the family applied for assistance in pre-October 1997 assignments only; or

(B) Advance payments owed to the State of Oregon under OAR 137-055-6210.

(h) "State's temporarily-assigned arrears" is past-due support assigned to the state during assistance periods, but which accrued during non-assistance periods, and were not permanently assigned under pre-October 1997 assignments. As of October 1, 2000, state's temporarily-assigned arrears revert to family's conditionally-assigned arrears during periods that the family is not receiving assistance.

(i) "Unreimbursed assistance" means the cumulative amount of assistance paid to a family or on behalf of a child(ren) for all months which has not been recovered by assigned support collections. The total amount of unreimbursed assistance that may be recovered is limited by the total amount of the assigned support obligation.

(2) Whenever support payments are assigned to the state, the state share of the payments will be either:

(a) Distributed to DHS if funds were expended to provide foster care assistance to the family;

(b) Distributed to OYA if funds were expended by OYA to provide care to a member of the family; or

(c) Retained by the Department of Justice (DOJ) if funds were expended to provide TANF cash assistance to the family.

(3) Whenever support payments are assigned to a Tribe, the Tribe's share of the payments will be distributed to the Tribe as provided in 42 USC 657.

(4) Table 1 is included in this rule as an aid in understanding the arrears types defined in section (1) of this rule. [Table not included. See ED. NOTE.]

(5) DOJ will distribute support payments to the family within two business days after receipt if sufficient information identifying the payee is provided, except as follows:

(a) Support payments received as a result of tax refund intercepts will be distributed within thirty calendar days of receipt or, if applicable, within fifteen calendar days of an administrative review or hearing. If the state is notified by the Secretary of the U.S. Treasury (the Secretary) or the Oregon Department of Revenue (DOR) that an offset on a non-assistance case is from a refund based on a joint return, distribution may be delayed, up to a maximum of six months, until notified by the Secretary or DOR that the obligor's spouse has been paid their share of the refund.

(b) Support payments received from a garnishment, issued pursuant to ORS Chapter 18, will be held for 40 days if the garnishee is making a payment of other than wages or 120 days if the garnishee is making a payment of wages unless the obligor waives the right to make a challenge to a garnishment as set out in OAR 137-055-4520 or, if the obligor or any person

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who has an interest in the garnished property makes a challenge to garnishment, the support payment will be held pending the court decision;

(c) Support payments for future support, per section (19) of this rule; or

(d) Support payments for less than five dollars may be delayed until a future payment is received which increases the payment amount due the family to at least five dollars.

(e) When a check has been dishonored, future support payments paid by personal check from that payor may be held in accordance with OAR 137-055-6240;

(f) When an obligor contests an order to withhold, funds will be disbursed pursuant to OAR 137-055-4160(5).

(6) DOJ may send support payments designated for the obligee to another person or entity caring for the child(ren); however, prior to doing so, DOJ will require a notarized statement of authorization from the obligee or a court order requiring such distribution. DOJ will change the payee to a private collection agent that the obligee has retained for support enforcement services only in accordance with OAR 137-055-6025.

(7) Child support and spousal support have equal priority in the distribution of payments.

(8) For Oregon support orders or modifications entered on or after October 4, 1997, a prorated share (unless otherwise ordered) of current support payments received within the month due will be distributed directly to the child qualified as a child attending school per ORS 107.108 and OAR 137-055-5120. Any arrearages resulting from unpaid current support is a judgment owing to the obligee as the judgment creditor.

(9) If the obligor has a current support obligation for multiple children on a single case, those children have different assistance status and the order does not indicate a specified amount per child, current support payments will be prorated based upon the number of children and their assistance status. Support payments in excess of current support for these cases will be distributed as provided in subsections(15)(b) through (e) of this rule. For example, the obligor has a current support obligation for three children of \$300 per month. One child is not receiving assistance, one child is receiving cash assistance under the TANF program, and foster care maintenance payments are being made on behalf of the third child. A \$300 current support payment would be allocated as follows:

(a) \$100 to the family on behalf of the child not receiving assistance;

(b) \$100 to DOJ on behalf of the child receiving cash assistance under the TANF program not to exceed the amount of unreimbursed assistance; and

(c) \$100 to DHS for the foster care maintenance payments being made on behalf of the third child.

(10) Notwithstanding any other provisions of this rule, support payments received on behalf of an obligor with an open bankruptcy case will be allocated and distributed as directed by the bankruptcy trustee, the obligor's bankruptcy plan and in accordance with federal bankruptcy law.

(11) DOJ will retain the fee charged by the Secretary for cases referred for Full Collection Services per OAR 137-055-4360 from any amount subsequently collected by the Secretary under this program. DOJ will credit the obligor's case for the full amount of collection and distribute the balance as provided in sections (13) through (15) as applicable.

(12) Within each arrearage type in the sequence of payment distribution in sections (13) through (17) of this rule, DOJ will apply the support payment to the oldest debt in each arrearage type.

(13) DOJ will distribute support payments received on behalf of a family who has never received assistance to the family, first toward current support, then toward support arrearages, not to exceed the amount of arrearages.

(14) DOJ will distribute support payments received on behalf of a family receiving assistance in the following sequence:

(a) Current support to the state, not to exceed the amount of unreimbursed assistance unless the state is making foster care maintenance payments on behalf of the child(ren);

(b) State's permanently-assigned arrearages, not to exceed the amount of unreimbursed assistance unless the state is making foster care maintenance payments on behalf of the child(ren);

(c) State's temporarily-assigned arrearages, not to exceed the amount of unreimbursed assistance unless the state is making foster care maintenance payments on behalf of the child(ren);

(d) Family's unassigned arrearages during assistance period unless the state is making foster care maintenance payments on behalf of the child(ren);

(e) If the state is making foster care maintenance payments on behalf of the child(ren), support payments in excess of unreimbursed assistance, up to the total support obligation owed, will be reported as excess and be

paid to DHS to be used in the manner it determines will serve the best interests of the child(ren).

(15) DOJ will distribute support payments received on behalf of a family who formerly received assistance in the following sequence:

(a) Current support to the family;

(b) Family's unassigned arrearages;

(c) Family's conditionally-assigned arrearages;

(d) State's permanently-assigned arrearages, not to exceed the amount of unreimbursed assistance;

(e) Family's unassigned arrearages during assistance period.

(16) Notwithstanding any other provisions of this rule, DOJ will distribute support payments received from federal tax refund intercepts in the following sequence:

(a) Fee charged by the Secretary. Despite the fee, DOJ must credit the obligor's case for the full amount of collection. If any portion of the federal tax refund intercept payment will be applied to subsection (b), (c), or (d) of this section, the fee will be paid by DOJ;

(b) State's permanently-assigned arrearages as defined in paragraph (1)(g)(A) of this rule, not to exceed the amount of unreimbursed assistance;

(c) State's permanently-assigned arrearages as defined in paragraph (1)(g)(B) of this rule;

(d) State's temporarily-assigned arrearages, not to exceed the amount of unreimbursed assistance;

(e) Family's conditionally-assigned arrearages. However, federal tax refund intercepts applied to family's conditionally-assigned arrearages must be retained by the state, not to exceed the amount of unreimbursed assistance;

(f) Family's unassigned arrearages.

(17) Notwithstanding any other provisions of this rule, DOJ will distribute support payments received from state tax refund intercepts in the following sequence:

(a) Fee charged by the DOR. Despite the fee, DOJ must credit the obligor's case for the full amount of collection. If any portion of the state tax refund intercept payment will be applied to assigned current support or subsections (e), (f) or (g) of this section, the fee will be paid by DOJ;

(b) Current support;

(c) Family's unassigned arrearages;

(d) Family's conditionally assigned arrearages;

(e) State's permanently assigned arrearages, not to exceed the amount of unreimbursed assistance;

(f) State's temporarily assigned arrearages, not to exceed the amount of unreimbursed assistance;

(g) Parentage testing fee.

(18) Any excess funds remaining after arrearages are paid in full will be processed as provided in OAR 137-055-6260 unless the obligor has elected in writing to apply the credit balance toward future support as provided in section (19) of this rule.

(19) DOJ will distribute support payments representing future support on a monthly basis when each such payment actually becomes due in the future. No amounts may be applied to future months unless current support and all arrearages have been paid in full.

(20) When an obligor has multiple support cases, the distribution sequence for each case is set out in sections (13) through(17), but DOJ will allocate support payments to each of the multiple cases as follows:

(a) When an income withholders remits a single payment that is a combined payment intended to comply with more than one income withholding order against the obligor, and the obligor's income is sufficient for the withholders to fully comply with each order to withhold income issued pursuant to ORS chapter 25, DOJ will ensure that the amount distributed to each case is consistent with the withholding order's limitations. However, when the obligor is paid on a weekly basis, for those months in which there is an extra pay period due to the manner in which weeks fall during the year, the weekly amount may be distributed to each case when it is received, even if the monthly withholding limitation has already been reached.

(b) When an income withholders remits a single payment that is a combined payment intended to comply with more than one income withholding order against the obligor, but the obligor's income is not sufficient for the withholders to fully comply with each order to withhold income issued pursuant to ORS chapter 25, DOJ will allocate the amount received as follows:

(A) If the amount is not sufficient to pay the current support due on all of the obligor's support cases for which an order to withhold is in effect, each withholding case will receive a proportionate share of the total amount withheld. For each case, DOJ will determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support

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cases for which an order to withhold is in effect, and then multiplying the resulting percentage by the total amount withheld.

(B) If the amount withheld from the obligor's income is sufficient to pay the current support due on all cases, but is not enough to fully comply with the order to withhold on all cases where arrears are owed, the amount received will be allocated as follows:

(i) Current support to each withholding case;

(ii) Equally to each withholding case where arrears are owed. However, no case may receive more than the maximum allowable withholding amount for that case pursuant to ORS 25.414 or, as appropriate, under an expanded income withholding pursuant to ORS 25.387. Any remaining funds will be equally distributed to the obligor's other cases. No case may receive more than the total amount of current support and arrears owed on that case at the time this distribution is made.

(c) When support payments received from federal tax refund intercepts are not sufficient to pay the full arrears amount on each case certified for federal tax offset, DOJ will allocate the amount received as follows:

(A) If the total amount received is not sufficient to pay the state's permanently-assigned arrears on all of the obligor's certified cases, each certified case will receive an equal share. However, no case may receive more than the state's permanently-assigned arrears on that case.

(B) If the total amount is sufficient to pay the state's permanently-assigned arrears on all certified cases, but is not enough to pay in full all the state's temporarily-assigned arrears on all of the obligor's certified cases, the amount received will be allocated as follows:

(i) State's permanently-assigned arrears to each certified case;

(ii) An equal share of the remaining funds for each certified case. However, no case may receive more than the state's temporarily-assigned arrears on that case.

(C) If the total amount is sufficient to pay the state's permanently assigned arrears and the state's temporarily-assigned arrears on all certified cases, but is not enough to pay in full the family's arrears on all of the obligor's certified cases, the amount received will be allocated as follows:

(i) State's permanently-assigned arrears to each certified case;

(ii) State's temporarily-assigned arrears to each certified case;

(iii) An equal share of the remaining funds for each certified case.

However, no case may receive more than the total amount of arrears owed on that case at the time this distribution is made.

(d) When support payments received from state tax refund intercepts are not sufficient to pay the current support and full arrears amount on each case certified for state tax offset, DOJ will allocate the amount received as follows:

(A) If the total amount received is not sufficient to pay the current support due on all of the obligor's certified cases, each certified case will receive a proportionate share of the total amount received. For each case, DOJ will determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases certified for state tax offset, and then multiplying the resulting percentage by the total amount received.

(B) If the total amount received is sufficient to pay the current support due on all cases but is not sufficient to pay in full the family's arrears (both conditionally and unassigned arrears) on all of the obligor's certified cases, each certified case will be allocated an equal share. However, no case may receive more than the arrears amount due the family on that case at the time this distribution is made.

(C) If the total amount is sufficient to pay the family's arrears (both conditionally and unassigned arrears) on all certified cases, but is not enough to pay in full all the state's permanently-assigned arrears on all of the obligor's certified cases, the amount received will be allocated as follows:

(i) Family's arrears (both conditionally and unassigned arrears) on all certified cases;

(ii) An equal share of the remaining funds for each certified case toward state's permanently-assigned arrears. However, no case may receive more than the state's permanently-assigned arrears on that case.

(D) If the total amount received is sufficient to pay both the family's arrears and the state's permanently-assigned arrears, but not sufficient to pay the state's temporarily-assigned arrears on all of the obligor's certified cases, the amount received will be allocated as follows:

(i) Family's arrears (both conditionally and unassigned arrears) on all certified cases;

(ii) State's permanently-assigned arrears on all certified cases;

(iii) An equal share of the remaining funds toward state's temporarily-assigned arrears. However, no case may receive more than the state's temporarily-assigned arrears on that case.

(E) Any remaining funds may be applied toward parentage testing fee.

(e) DOJ will allocate support payments made by personal check, money order, or cash as provided in subsection (20)(h) of this rule unless the obligor designates in writing at the time of payment the amounts to be allocated to each case. DOJ will apply payments in excess of current support and arrears toward future support as provided in section (19) of this rule.

(f) DOJ will allocate support payments to one case, rather than proportionately, when:

(A) The support payment resulted from a garnishment, issued pursuant to ORS chapter 18, on a particular case; or

(B) The support payment resulted from the sale or disposition of a specific piece of property against which a court awarded a specific obligee a judgment lien for child support; or

(C) The support payment resulted from a contempt order in a particular case; or

(D) Any other judicial order that requires distribution to a particular case.

(g) When a single writ of garnishment is issued for two or more cases as provided in ORS 18.645, DOJ will allocate support payments only among the cases listed in the writ of garnishment and in the manner provided in subsection (20)(h) of this rule.

(h) DOJ will allocate all other support payments received as follows:

(A) If the total amount is not sufficient to pay the current support due on all of the obligor's support cases, each case will receive a proportionate share of the total amount received. For each case, DOJ will determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases, and then multiplying the resulting percentage by the total amount received.

(B) If the amount received is sufficient to pay the current support due on all cases, but is not enough to pay in full all cases where arrears are owed, the amount received will be allocated as follows:

(i) Current support to each case;

(ii) Equally to each case where arrears are owed. However, no case may receive more than the total amount of current support and arrears owed on that case at the time this distribution is made. Any remaining funds will be equally distributed to the obligor's other cases.

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

Stat. Auth.: ORS 25.020, 25.610 & 180.345

Stats. Implemented: ORS 18.645, 25.020, 25.150, 25.414 & 25.610

Hist.: PWC 851(Temp), f. & ef. 8-11-77; Renumbered from 461-004-0518; AFS 3-1978, f. & ef. 1-6-78; AFS 88-1980, f. & ef. 12-10-80; AFS 23-1987(Temp), f. 6-19-87, ef. 7-1-87; AFS 60-1987, f. & ef. 11-4-87; AFS 31-1989, f. 6-6-89, cert. ef. 6-9-89; Renumbered from 461-035-0003; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0410; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0248; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6020; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 5-2005, f. & cert. ef. 7-15-05

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## Department of Oregon State Police Chapter 257

**Adm. Order No.:** OSP 2-2005

**Filed with Sec. of State:** 7-15-2005

**Certified to be Effective:** 8-21-05

**Notice Publication Date:** 7-1-05

**Rules Amended:** 257-070-0005, 257-070-0010, 257-070-0015, 257-070-0025, 257-070-0040

**Subject:** Under ORS 181.585 to 181.589, the Oregon State Police (OSP) is authorized to designate unsupervised adult and juvenile sex offenders as predatory sex offenders and to notify the public concerning unsupervised adult and juvenile predatory sex offenders. In designating a person as a predatory sex offender, OSP must use a sex offender risk assessment scale approved by the Department of Corrections (DOC) or a community corrections agency. On May 1, 2004, the Static 99 became the approved risk assessment scale used by the DOC and the State Board of Parole and Post-Prison Supervision to designate persons as predatory sex offenders. Prior to May 1, 2004, OSP used the Department of State Police sex offender risk assessment scale, which was approved by the DOC. On March 16, 2004,



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OSP submitted draft changes to Oregon Administrative Rules (OAR) 257-070-0005 through 257-070-0040 for legal review, which was not completed until May 18, 2004. The Department filed temporary rules adopting the Static 99 risk assessment scale on July 15, 2004. The permanent rule change will allow OSP to designate as predatory those persons who meet the criteria using the tool approved by DOC and the State Board of Parole and Post-Prison Supervision.

**Rules Coordinator:** Cort Dokken—(503) 378-3720, ext. 4105

## 257-070-0005

### Statement of Purpose

The purpose of these rules is to implement and interpret ORS 181.585 to 181.608. The Oregon State Police is authorized to adopt rules interpreting and implementing the described statutes. These rules establish standards and procedures for victim and public access to sex offender information and for designation of unsupervised adult and juvenile offenders as predatory sex offenders.

Stat. Auth.: ORS 183.335, 181 & 192.430  
Stats. Implemented: ORS 181.585 - 181.608  
Hist.: OSP 3-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; OSP 6-1991, f. & cert. ef. 11-21-91; OSP 2-1999(Temp), f. & cert. ef. 9-13-99 thru 3-10-00; OSP 3-2000, f. & cert. ef. 7-11-00; OSP 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; Administrative correction, 2-17-05; OSP 2-2005, f. 7-15-05, cert. ef. 8-21-05

## 257-070-0010

### Authority

Authority to provide information concerning registered sex offenders to victims is conferred by ORS 181.601. Authority to make information concerning registered sex offenders available to the public is conferred by ORS 181.586 to 181.592. Authority to designate unsupervised adult and juvenile offenders as predatory sex offenders and authority to notify the public concerning predatory sex offenders are conferred by ORS 181.585 to 181.589.

Stat. Auth.: ORS 183.335, 181 & 192.430  
Stats. Implemented: ORS 181.585 - 181.608  
Hist.: OSP 3-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; OSP 6-1991, f. & cert. ef. 11-21-91; OSP 2-1999(Temp), f. & cert. ef. 9-13-99 thru 3-10-00; OSP 3-2000, f. & cert. ef. 7-11-00; OSP 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; Administrative correction, 2-17-05; OSP 2-2005, f. 7-15-05, cert. ef. 8-21-05

## 257-070-0015

### Definitions

As used in these rules:

(1) "Predatory sex offender" means a person who has been determined to be predatory under ORS 181.585 to 181.589.

(2) "Registered sex offender" means a person who is required to report and be registered as a sex offender under ORS 181.595, 181.596, or 181.597.

(3) "Sex Offender Web Site" means a site established and maintained on the World Wide Web by the Department of State Police, containing information concerning registered and predatory sex offenders.

(4) "Under supervision for the first time" means that the registered sex offender is serving any period of supervision, whether active or inactive, arising out of the sentence imposed by the court upon the offender's first conviction for a sex crime listed in ORS 181.594, including the following periods of supervision:

(a) In the case of a sentence of probation, the entire period of probationary supervision arising out of the probationary sentence, notwithstanding any periods of custody imposed or served in relation thereto. If probation is revoked and the offender is sentenced to a term of imprisonment, "under supervision for the first time" also includes all periods of supervision arising out of the revocation sentence, including any form of parole or supervised release from incarceration during, and any term of post-prison supervision imposed as part of, the revocation sentence.

(b) In the case of an indeterminate sentence of imprisonment, all periods of supervision arising out of the sentence, including any form of parole or supervised or conditional release from incarceration.

(c) In the case of a determinate sentence of imprisonment, all periods of supervision arising out of the sentence, including any form of supervised or conditional release from incarceration and the term of post-prison supervision imposed as part of the sentence.

(5) "Victim" means a person, or the legal guardian of a person, who is:

(a) The victim of a sex crime listed in ORS 181.594 the commission of which resulted in a conviction, a finding of guilty except for insanity, or a finding that a youth was within the jurisdiction of the juvenile court for an act which, if committed by an adult, would constitute a sex crime; or

(b) Any person who is named in a criminal complaint as a victim of a sex crime listed in ORS 181.594 who in the course of any judicial proceeding is acknowledged by the defendant to be the victim of a sex crime listed in ORS 181.594.

Stat. Auth.: ORS 181.555 & 181.730  
Stats. Implemented: ORS 181.585 - 181.608  
Hist.: OSP 3-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; OSP 6-1991, f. & cert. ef. 11-21-91; OSP 3-1994, f. & cert. ef. 8-1-94; OSP 2-1999(Temp), f. & cert. ef. 9-13-99 thru 3-10-00; OSP 3-2000, f. & cert. ef. 7-11-00; OSP 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; Administrative correction, 2-17-05; OSP 2-2005, f. 7-15-05, cert. ef. 8-21-05

## 257-070-0025

### Victim Access to Registered Sex Offender Information

(1) A victim shall be issued a victim identification number and shall be given the registry identification number of the registered sex offender who committed the crime against the victim:

(a) At any time, upon request by the victim; and

(b) Upon verification of the identification of the victim.

(2) The Department of State Police has established a toll-free telephone number, 1-800-551-2934, to provide victims with updates on the prison status, release information, parole status and any information concerning the registered sex offender who committed the crime against the victim that is authorized for release under ORS 181.585 to 181.601. The telephone line will be operational 8 a.m. to 5 p.m. Monday through Friday.

Stat. Auth.: ORS 183.335, 181 & 192.430  
Stats. Implemented: ORS 181.585 - 181.608  
Hist.: OSP 3-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; OSP 6-1991, f. & cert. ef. 11-21-91; OSP 2-1999(Temp), f. & cert. ef. 9-13-99 thru 3-10-00; OSP 3-2000, f. & cert. ef. 7-11-00; OSP 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; Administrative correction, 2-17-05; OSP 2-2005, f. 7-15-05, cert. ef. 8-21-05

## 257-070-0040

### Designation of Persons as Predatory Sex Offenders; Notice and Opportunity to Be Heard Regarding Designation as Predatory Sex Offender

(1) Under ORS 181.585 to 181.589, the Department of State Police is authorized to designate as predatory sex offenders:

(a) Persons who exhibit characteristics showing a tendency to victimize or injure others and who have been convicted of a sex crime listed in ORS 181.594(2)(a) to (d), convicted of attempting to commit one of those crimes, or found guilty except for insanity of one of those crimes, and who are not under the supervision of the Oregon Department of Corrections or a community corrections agency; and

(b) Persons who are required to report under ORS 181.595, 181.596, or 181.597 after having been found to be within the jurisdiction of the juvenile court for having committed acts that if committed by an adult would constitute sex crimes and who the Department of State Police has designated as predatory after consultation with the person's last primary supervising agency, and who are not under the supervision of the juvenile court.

(2) The Department of State Police will designate persons as predatory sex offenders as provided in ORS 181.585 to 181.589 and this rule.

(3) The Department of State Police will designate a person as a predatory sex offender if the person exhibits characteristics showing a tendency to victimize or injure others and meets the criteria for designation as a predatory sex offender established in the risk assessment scale approved by the Oregon Department of Corrections.

(4) Prior to designating a person as a predatory sex offender, the Department will notify the person in writing of the proposed designation, the basis for the designation and the method for submitting written objections to the proposed designation. The notice will include a copy of the risk assessment scale approved by the Oregon Department of Corrections as scored for that person. The notice of proposed designation will be sent to the person by registered or certified mail.

(5) A person who has received notice under subsection (4) of this rule may submit written objections to the proposed designation. The person must complete and sign the "Objections to Predatory Sex Offender Designation" form provided for that purpose.

(6) In addition to the person's signed "Objections to Predatory Sex Offender Designation" form, a person who has received notice under subsection (4) of this rule may submit other relevant written materials in support of the person's objection to the designation. For the purpose of this rule, "relevant written materials" means documentary evidence that will assist the Department of State Police in determining as a factual matter whether the person meets one or more of the sex offender risk assessment scale criteria upon which the Department of State Police proposes to rely in designating the person as a predatory sex offender. For the purpose of this rule, relevant written materials includes:

# ADMINISTRATIVE RULES

(a) A court order reversing, vacating or setting aside a judgment of conviction for a crime;

(b) A court order reversing, vacating or expunging a finding that the person was within the jurisdiction of the juvenile court for committing an act that if committed by an adult would constitute a crime;

(c) An order of pardon for a crime; or

(d) Police reports, pre-sentence investigation reports, court records and transcripts, or other documentary evidence relating to the circumstances of the person's crime or crimes.

(7) The person's signed "Objections to Predatory Sex Offender Designation" form and other relevant written materials, if any, must be received by the Department of State Police within 35 days of the date of the Department of State Police notice of proposed designation provided under subsection (4) of this rule.

(8) The Department of State Police will consider materials submitted under subsections (5) and (6) of this rule prior to making its final determination of whether the person meets the criteria for designation as a predatory sex offender, if the Department of State Police receives these materials within the time limit set forth in subsection (7) of this rule.

(9) If, after considering materials submitted under subsections (5) and (6) of this rule, the Department of State Police determines that the person meets the criteria for designation as a predatory sex offender, the Department of State Police will designate the person as a predatory sex offender and will inform the person in writing by registered or certified mail of the designation. The designation is effective as of the date of the letter informing the person of the designation.

(10) If, after considering materials submitted under subsections (5) and (6) of this rule, the Department of State Police determines that the person does not meet the criteria for designation as a predatory sex offender, the Department of State Police will inform the person in writing by registered or certified mail, that the Department of State Police is not designating the person as a predatory sex offender at that time.

(11) A person from whom the Department of State Police does not receive any materials under subsections (5) and (6) of this rule within 35 days of the date of the notice of proposed designation provided under subsection (4) of this rule will be deemed not to object to designation as a predatory sex offender, unless the cause for the failure to submit materials was beyond the reasonable control of the person, as determined by the Department of State Police. The designation is effective as of the thirty-sixth day after the date of the notice of proposed designation provided under subsection (4) of this section.

(12) The Department of State Police may designate a person as a predatory sex offender if the person meets the Department of Corrections sex offender risk assessment scale criteria for designation as a predatory sex offender, regardless of whether the Department of State Police or any other agency determined at any previous time that the person was not a predatory sex offender.

(13) Prior to petitioning for judicial review of the Department's designation of the person as a predatory sex offender under subsection (9) of this rule, the person shall file with the Department of State Police a petition for reconsideration of the designation. The petition for reconsideration must be received by the Department of State Police within 60 calendar days of the date of the Department's designation of the person as a predatory sex offender under subsection (9) of this rule and must also comply with other requirements of OAR 137-004-0080. The Department of State Police will inform the person in writing of its decision on reconsideration. The Department's decision on reconsideration will be sent by registered or certified mail and is effective as of the date of the decision on reconsideration.

(14) Notwithstanding subsection (13) of this rule, within 60 calendar days of the date of the Department's designation of the person as a predatory sex offender under subsection (9) of this rule, the Department of State Police may reconsider the designation on its own initiative as provided in OAR 137-004-0080. Following reconsideration of a designation on the Department's own initiative, the Department will inform the person in writing of its decision on reconsideration. The decision on reconsideration will be sent by registered or certified mail and is effective as of the date of the decision on reconsideration.

(15) In its discretion, the Department of State Police may conduct community notification or notify the public concerning a person designated as a predatory sex offender in any manner authorized by law.

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

Stat. Auth.: ORS 183.335, 181 & 192.430

Stats. Implemented: ORS 181.585 - 181.608

Hist.: OSP 4-1999(Temp), f. & cert. ef. 10-29-99 thru 4-25-00; OSP 3-2000, f. & cert. ef. 7-11-00; OSP 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; Administrative correction, 2-17-05; OSP 2-2005, f. 7-15-05, cert. ef. 8-21-05

## Department of Oregon State Police, Office of State Fire Marshal Chapter 837

**Adm. Order No.:** OSFM 11-2005

**Filed with Sec. of State:** 6-27-2005

**Certified to be Effective:** 6-27-05

**Notice Publication Date:** 5-1-05

**Rules Amended:** 837-040-0010

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

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

2) Amend sections 406.2-Frequency (employee training and response procedures) and section B 105.2-Buildings other than one and two family dwellings (fire flow requirements for buildings).

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

Copies of the amendments may be obtained by calling 503-373-1540, ext. 276 or found on the OSFM website: [www.sfm.state.or.us](http://www.sfm.state.or.us).

**Rules Coordinator:** Pat Carroll—(503) 373-1540, ext. 276

### 837-040-0010

#### Adoption of the International Fire Code

The 2003 edition of the **International Fire Code** as promulgated by the International Code Council is hereby adopted as the Oregon Fire Code, 2004 edition, subject to the exclusions there from and amendments thereto as hereafter set forth in these regulations.

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

Stat. Auth: ORS 476.030, 479 & 480

Stats. Implemented: ORS 476, 479 & 480

Hist.: FM 3-1986, f. & ef. 3-11-86; FM 5-1986 (corrects FM 3-1986), f. & ef. 4-30-86 & Renumbered from 837-040-0005, Sec. (3) Uniform Fire Code; FM 3-1989, f. 6-30-89, cert. ef. 7-1-89; FM 6-1990, f. & cert. ef. 9-13-90; FM 6-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1996, f. 1-22-96, cert. ef. 4-1-96; OSFM 1-1998, f. & cert. ef. 4-30-98; OSFM 3-1998, f. & cert. ef. 9-30-98; OSFM 4-1999, f. 12-29-99, cert. ef. 1-1-00; OSFM 3-2000, f. 4-1-00, cert. ef. 5-1-00; OSFM 13-2000, f. 10-3-00, cert. ef. 11-1-00; OSFM 9-2001, f. 10-3-01, cert. ef. 2-1-02; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04; OSFM 8-2004(Temp), f. 12-29-04, cert. ef. 1-3-05 thru 6-30-05; OSFM 11-2005, f. & cert. ef. 6-27-05

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## Department of Revenue Chapter 150

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

**Filed with Sec. of State:** 6-27-2005

**Certified to be Effective:** 6-30-05

**Notice Publication Date:** 5-1-05

**Rules Adopted:** 150-305.810

**Rules Amended:** 150-314.385(1)-(D), 150-316.207

**Rules Repealed:** 150-314.385(1)-(C), 150-314.397

**Rules Ren. & Amended:** 150-316.162(4) to 150-316.162(3)

**Subject:** To adopt or amend administrative rules relating to personal income tax, collections, business tax and excise taxes.

**Rules Coordinator:** Judith Lile—(503) 947-2099

### 150-305.810

#### Verification of Returns, Statements, or Documents Filed Under Tax Law

(1) The declaration under Oregon Revised Statute 314.385(2) that a return, statement, or document is made under penalties for false swearing and is true, complete, and correct must be verified by the taxpayer or by an authorized agent, and by both the husband and wife or by an authorized agent on a joint personal income tax return. Verification of the declaration may be made through:

(a) Signing the return.

(b) A signed statement, including Oregon Form EF. The statement may be received by the department through personal delivery, mail, e-mail, or fax.

(c) An electronic signature. An electronic signature is the federal personal identification number used to sign the federal return when electronically filing.

(2) For personal income tax withholding reports filed in compliance with ORS 316.162 to 316.223, a person signing the Oregon Quarterly Tax Report, thus verifying the accuracy of the report, is not automatically deemed an employer that may become personally liable for withholdings

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due but unpaid for the quarter which is the subject of the filing. Persons not signing the report may be held liable if acting in the capacity of an employer as defined in ORS 316.162(3).

Stat. Auth.: ORS 305.100  
Stats. Implemented: ORS 305.810  
Hist.: REV 1-2005, f. 6-27-05, cert. ef. 6-30-05

## 150-314.385(1)-(D)

### Filing Returns: Official Forms, Standards for Substitute Tax Forms; Treatment of Forms Not Meeting the Standards; Treatment of Payments Received With Forms Not Meeting the Standards

(1) Definitions for Purposes of this Rule:

(a) *Official form.* An official form is any payroll, income, or excise tax form prepared, printed, and distributed by or on behalf of the department pursuant to Oregon Revised Statutes (ORS) Chapters 310, 314, 315, 316, 317, 318, Lane Transit District (LTD) Ordinance 38, and Tri-County Metropolitan Transportation District (TRIMET) Ordinance 92.

(b) *Substitute form.* A substitute form is any payroll, income, or excise tax form authorized under ORS Chapters 310, 314, 315, 316, 317, 318, LTD Ordinance 38, or TRIMET Ordinance 92 that is intended to replace the official form.

(c) *Tax Return.* A tax return is a payroll, income, or excise tax form filed with the department by or on behalf of a taxpayer under the provisions of ORS Chapter 310, 314, 315, 316, 317, 318, LTD Ordinance 38, or TRIMET Ordinance 92.

(2) A tax return must be made on the department-prescribed forms, which may be obtained upon request from the department. Such forms are widely distributed, but a failure to receive any forms does not relieve the taxpayer from the responsibility to file any return required by statute.

(3) The department may accept a substitute form filed in lieu of an official form if the substitute form meets the standards set forth in this rule. It is the intent of the department to follow the National Association of Computerized Tax Processors (NACTP) standards as closely as is practical.

(4) Substitute form standards. A substitute form with or without optical character readable (OCR) scan lines must be a duplicate of the official form unless the variation is within the exceptions listed in section (4) of this rule. The overall format of substitute forms must match the format of official forms. Overall format includes graphics, location of lines, boxes, data entry symbols, spacing, and OCR scan line.

(a) A substitute form must be on paper of the same overall dimension (size) and weight and of a quality equal to or better than that used for the official form.

(b) Substitute forms and the filled-in data must be legible and must not have extra text or marks which do not appear on the official forms.

(c) The social security number on substitute forms must be separated by hyphens after the third and fifth digits.

(d) If the substitute form has OCR scan lines, black nonreflective ink in OCR-A font must be used for printing the scan line.

(5) Exceptions. The substitute form may differ from the official form with respect to the exceptions listed in this section. However, the difference may delay processing of the tax return.

(a) Official forms which are printed on colored paper may be reproduced in black ink on white paper.

(b) Official forms which use both sides of the paper may be reproduced on one side only of two successive pages.

(c) Reproductions of the data entry symbols may vary in size from that of the data entry symbols on the official form if the symbols conform to the following specifications:

(A) The data entry dot must be a filled circle (•) at least 1/16 inch in diameter and no larger than 1/8 inch in diameter centered vertically on the text line;

(B) The data entry symbols must not obstruct or overlap line numbers or captions; and

(C) The data entry symbols must be printed on the substitute form in the same position relative to the information to be data-entered as on the official form.

(d) All text on the official form which is larger in size than 14 point print may be reproduced on the substitute form in 14 point print.

(e) The boxes (data entry areas) printed on the official form for entry of the filled-in data may be reproduced on the substitute form without a vertical line provided to divide the dollar amount from the cents amount.

(6) Photocopies of official forms may be filed if the official form does not contain OCR printing.

(7)(a) Substitute forms must be approved by the department prior to use. Substitute forms which do not meet the requirements of this rule may not be filed in lieu of the official forms. The department may reject and

return to the taxpayer tax returns using substitute forms which do not meet the requirements of this rule.

(b) A tax return which has been rejected under this rule does not meet the filing requirement of the applicable program. The taxpayer must file a tax return using an official form or a substitute form which meets the requirements of this rule in order to meet the filing requirement under the provisions of the personal income tax, corporate income tax and corporate excise tax programs; the filing requirement under the TRIMET self-employment tax and LTD programs; the filing requirement under ORS 314.724 for partnership returns; or the filing requirement under the Elderly Rental Assistance program; If the return is rejected, the taxpayer may be assessed penalty for failure to file a tax return as provided under ORS 314.400, 314.724 or as otherwise provided under Oregon law.

(8) If the department receives payment with a substitute form which does not meet the requirements of this rule, the department will treat the payment as an estimated tax payment under the provisions of ORS Chapters 314 or 316.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.385

Hist.: RD 9-1987(Temp), f. & cert. ef. 7-8-87; RD 11-1987, f. & cert. ef. 11-1-87; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 1-2005, f. 6-27-05, cert. ef. 6-30-05

## 150-316.162(3)

### Personal Liability of Responsible Officers, Members, or Employees for Taxes Withheld

(1) To be held personally liable for unpaid withholdings under ORS 316.162, a person must have been considered to have been an "employer." In addition, the person must have been in a position to pay the withholdings or direct the payment of the withholdings at the time the duty arose to withhold or pay over the taxes. Additionally, the person must have been aware, or have been in a position that should have been aware, that the withholdings were not paid to the department. An employer cannot avoid personal liability by delegating their responsibilities to another.

(2) "Employer" includes, but is not limited to an officer, member or employee of a corporation, partnership or other business entity, if, among other duties, that individual has:

(a) The power or authority to see that the withholding taxes are paid when due;

(b) Authority to prefer one creditor over another;

(c) Authority to hire and dismiss employees;

(d) Authority to set employees' working conditions and schedules;

(e) Authority to sign or co sign checks;

(f) Authority to compute and sign payroll tax reports;

(g) Authority to make fiscal decisions for the business;

(h) Authority to incur debt on behalf of the business; or

(i) Performed duties other than those outlined by the corporate bylaws or partnership agreement.

(3) The following factors do not preclude a finding that the individual is liable for the payment of taxes which were required to be withheld:

(a) Whether the failure to pay over the required withholding was willful;

(b) Whether the individual received remuneration;

(c) Maintenance of full-time employment elsewhere;

(d) The department considers another individual liable for the same withholding taxes;

(e) A corporate bylaw or partnership agreement position description to the contrary;

(f) Absence of signatory authority on a business bank account;

(g) Absence of bookkeeping or recordkeeping duties;

(h) Absence of authority to hire, fire, and to set working conditions and schedules; or

(i) Whether any functions indicating liability have been delegated to another.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.162

Hist.: RD 11-1985, f. 12-26-85, cert. ef. 12-31-85; REV 8-2001, f. & cert. ef. 12-31-01, Renumbered from 150-316.162(3); REV 1-2005, f. 6-27-05, cert. ef. 6-30-05, Renumbered from 150-316.162(4)

## 150-316.207

### Liability for Unpaid Withholdings; Warrant for Collection

(1) It is the employer's duty to hold in trust any amount of tax withheld from the wages of employees and to assume custodial liability for amounts to be paid to the Department of Revenue. Any employer who fails to pay the tax when due is subject to penalties as provided in ORS Chapter 314 the same as any other taxpayer who fails to file a return or pay a tax



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when due. Any employer who fails to pay the tax withheld to the department violates ORS 314.075 and is subject to the penalty provisions of subsection (1) of ORS 314.991.

(2) If a corporation or partnership is absorbed by another corporation or partnership in a statutory merger or consolidation, the resulting entity is regarded as the same employer as the absorbed entity. The new entity is liable for payment of withholdings.

(3) If a corporation or partnership fails to file returns or to pay the tax withheld when due, any or all officers, members and employees who are responsible for exercising the duties of an employer may be held personally responsible for the returns and payments together with any interest and penalties due. Whether the person has actually exercised the duties or not is immaterial.

(4) If the department issues a notice of liability or notice of determination and assessment naming any officer, member or employee as liable for unpaid withholdings, the department may issue a warrant against the person to enforce collection of any amount of delinquent withholdings, including interest and penalties. A notice of determination and assessment issued only in the name of the corporation or partnership does not authorize the department to issue a warrant against any officer, member or employee for collection of delinquent withholdings.

Stat. Auth.: ORS 305.100  
Stats. Implemented: ORS 316.207  
Hist.: 11-71; 12-19-75; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; REV 1-2005, f. 6-27-05, cert. ef. 6-30-05

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

**Rules Amended:** 150-308.215(1)-(A), 150-311.668(1)(a)-(A), 150-321.700(13)

**Rules Repealed:** 150-308.030(4), 150-308.205(3)

**Rules Ren. & Amended:** 150-321.005 to 150-321.005(12)

**Subject:** To adopt or amend administrative rules relating to property tax, Senior Citizens' property tax deferral and Timber tax.

**Rules Coordinator:** Judith Lile—(503) 947-2099

## 150-308.030

### Standards for Imposition, Waiver, and Reduction of Penalty on Utilities and Designated Companies Assessed by the Department Imposition of Penalty for Failure to File a Timely or Complete Return

(1) The department may impose a penalty under ORS 308.030 whenever an annual statement is not filed within the time fixed for filing an annual statement or by the approved extension date, or an incomplete annual statement is filed.

(a) The annual statement packets that are mailed to the taxpayer contain cover letters which specify the information that the taxpayer must include in the annual statement the taxpayer submits to the department. If a taxpayer submits an incomplete annual statement, the department will return it to the taxpayer with a notice stating the information that is required for the annual statement to be considered complete. A complete annual statement must be refiled within 14 days from the date on the notice of the incomplete filing.

(b) The taxpayer may be subject to a late-filing penalty under ORS 308.030 if the complete annual statement is not filed by the later of the original due date, the approved extension date, or 14 days from the date on the notice of the incomplete filing. Taxpayer Request for Waiver or Reduction

(2) Taxpayers who object to a late-filing penalty imposed under ORS 308.030 for late filing of an annual statement may request that the penalty be waived or reduced. The director of the department will consider all requests to waive or reduce late-filing penalties imposed under ORS 308.030 consistent with this rule.

(3) The request for waiver or reduction of a late-filing penalty must be in writing and must be signed by the taxpayer, an officer of the taxpayer, or an authorized representative of the taxpayer.

(4) The taxpayer may file a request for waiver or reduction of the late-filing penalty at any time after the taxpayer is subject to the late-filing penalty, but must be received by the department no later than July 31, of the year in which the director reviews the assessment roll for the year of delinquency.

(5) The request for waiver or reduction of a late-filing penalty must contain all the facts showing that one or more of the following factors for waiver or reduction of the late-filing penalty apply:

(a) The actions of the taxpayer resulted in the imposition of a penalty which constituted a first-time offense on the part of the taxpayer.

(b) Good and sufficient cause, as defined in ORS 305.288(5)(b), exists for a taxpayer's failure to file the annual statement required by law within the time fixed for filing or the approved extension date.

(6) Examples of situations the director may accept as good and sufficient cause for the late filing of an annual statement include:

(a) The delay was caused by the death or serious illness of the person who is solely responsible for filing the annual statement, or death or serious illness in that person's immediate family.

(b) The delay was caused by the unavoidable and unforeseen absence of the person who is solely responsible for filing the annual statement prior to the due date of the annual statement.

(c) The delay occurred because the taxpayer did not receive the annual statement packet mailed by the department to the taxpayer's last-known address, which was not the taxpayer's current address. The annual statement packet was returned to the department, remailed to a new address, and the taxpayer responded within the extended filing time.

(d) The delay was caused by the destruction by fire, natural disaster or other casualty of the taxpayer's records needed to prepare the annual statement.

(7) Examples of situations the director may not accept as good and sufficient cause for the late filing of the annual statement include:

(a) The delay was due to the taxpayer's reliance upon an individual (e.g., an accountant) to prepare the annual statement on time. The taxpayer has an affirmative duty to file timely.

(b) The delay was the result of personnel changes within the taxpayer's organization.

(c) For private railroad companies, the delay was the result of railroads not providing necessary mileage reports prior to the filing deadline or the approved extension date.

(8) The director will use the following guidelines when considering a request to waive or reduce a late-filing penalty.

(a) Non-filers — No waiver of late-filing penalty.

(b) Filing delinquency 1–5 days: 6–30 days: Over 30 days.

(i) First time offense for late-filing: Waive: Waive: Waive.

(ii) Good and sufficient cause established: Waive: Reduce 75%: No Waiver

(c) Promote long-term effectiveness and efficiency

(i) First delinquency in rolling three years: Waive: Reduce 75%: No Waiver

(ii) Second delinquency in rolling three years: Reduce 75%: Reduce 50%: No Waiver

(iii) Third delinquency in rolling three years: No Waiver: No Waiver: No Waiver

(d) Days late are calculated from the later of the original due date or the approved extension date. If no delinquency has occurred within the preceding three years, any request for waiver or reduction may be considered the same as a "first delinquency in rolling three years." If a taxpayer has been subject to a late-filing penalty at any time within the preceding three years, a second delinquency will be considered a "second delinquency in rolling three years," even if a delinquency did not occur in the intervening year.

Stat. Auth.: ORS 305.100, 308.030.  
Stats. Implemented: ORS 308.030.  
Hist: REV 2-2005, f. 6-27-05, cert. ef 6-30-05

## 150-308.146

### Determining Maximum Assessed Value when the Property Class is Changed

(1) The single act of changing the property classification, described in OAR 150-308.215(1)-(A), to better reflect the highest and best use of the property, does not qualify as an exception to the 3 percent limitation on growth in the maximum assessed value (MAV), as described in ORS 308.146(1).

(2) Any exception value added to the base MAV after the change is made to the property class will be calculated by applying the changed property ratio of the current property class to the real market value of any qualified exception identified in ORS 308.146.

Stat. Auth.: ORS 305.100.  
Stats. Implemented: ORS 308.146.  
Hist: REV 2-2005, f. 6-27-05, cert. ef 6-30-05

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## 150-308.215(1)-(A)

### Real Market Value and Property Classification as Part of Assessment Roll

(1) In addition to the assessed value of property, the assessment roll must show:

(a) The real market value (RMV) of the land, excluding all buildings, structures and improvements thereon;

(b) The RMV of all buildings, structures and improvements; and

(c) The total RMV for each parcel of real property not required to be assessed as a unit.

(d) For properties subject to ORS Chapter 100, for example, condominiums and time shares that are required to be assessed as a unit, the assessment roll must show the RMV as well as the assessed value of each unit.

(2) The assessment roll must include the property classification code number for each parcel of real property in the county, except for those properties assessed by the department under ORS 308.505 to 308.605. The assessor must classify and assign a property classification code number to each parcel as provided in section (8) of this rule.

(3) The assessor must maintain the proper classification on each parcel of property.

(4) A county must separately identify and adjust land and improvement values for each property class for each market area to bring real property to RMV. These adjustments to value must be developed from market studies or by any other method approved by the department as provided under ORS 309.200.

(5) The class code numbers established by this rule must be used for computing the real property class ratios required by ORS 309.200.

(6) An assessor must obtain written approval from the Department of Revenue before deviating from the basic property classes defined in section (8) of this rule.

(7)(a) All classification must be based upon highest and best use of the property. The term "highest and best use" is defined in OARs 150-308.205-(A) and 150-308.205-(D) The class associated with the property may or may not be its current use.

(b) Unique properties can be classified under the "miscellaneous" category in section (8). The "miscellaneous" category also can be used for property requiring a separate trend.

(c) The property classification system must not be used to categorize market data that are more accurately described by other characteristics, such as the quality class of the improvements, market areas, or neighborhoods.

(d) The property class for mixed-use or transitional properties will be that use that contributes the most to the real market value on the current assessment date:

(A) A mixed-use property is one in which different parts of the property are used differently, such as a commercial use on one part, and a residential use on another part.

(B) A transitional use property is one in which the real market value on the current assessment date, at its current highest and best use, is being influenced in the market by an anticipated change in future use, such as residential property that is likely to sell for a commercial use in the future but is not in commercial use on the assessment date.

(8) DEFINITIONS FOR PROPERTY CLASSIFICATION SYSTEM.

[Classification codes not included. See ED. NOTE.]

(9) Starting with the 2006-07 tax year, each assessor must prepare an annual plan that outlines how the county will comply with the provisions of this rule no later than the January 1, 2009, assessment date. The plan must be submitted as part of the sales ratio study and accompanying appraisal plan submitted under ORS 309.200 and 309.203. The plan must address how the county complies with or intends to comply with the provisions of this rule for the initial tax year and all subsequent tax years up to the 2009-2010 tax year.

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

Stat. Auth.: ORS 305.100, 308.215

Stats. Implemented: ORS 308.215

Hist.: 3-70; 9-71; 11-73; 1-1-77; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; TC 17-1979, f. 12-20-79, cert. ef. 12-31-79; RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-308.215(1); RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 2-2005, f. 6-27-05, cert. ef. 6-30-05

## 150-309.026(2)-(B)

### BoPTA Lack of Jurisdiction for Designated Utilities and Companies Assessed by the Department

The board of property tax appeals (BoPTA) must dismiss, for lack of jurisdiction, petitions for the reduction of the assessed, specially assessed, real market, and maximum assessed value of designated utilities and companies assessed by the Department of Revenue under ORS 308.505 to 308.665 and 308.805 to 308.820, commonly referred to as centrally assessed property. The process for appealing the value of centrally assessed property is described in ORS 308.595(3). The notification requirements of ORS 309.100(5) do not apply to dismissal for lack of jurisdiction identified in this rule.

Stat. Auth.: ORS 305.100, 306.115 (1)

Stats. Implemented: ORS 309.026

Hist.: REV 2-2005, f. 6-27-05, cert. ef. 6-30-05

## 150-311.668(1)(a)-(A)

### Requirements to Qualify for Senior Citizen's Property Tax Deferral

Applicants for the Senior Citizens' Property Tax Deferral must file either an individual or a joint application and meet the following requirements:

(1) A qualifying sole property owner or one qualifying spouse may apply as an individual applicant. The individual who files the application must:

(a) Be 62 years of age or older on or before April 15 of the year in which the claim is filed;

(b) Live on the property, except for an absence due to health related reasons; and

(c) Individually, or with his or her spouse, either own the property or be purchasing a fee-simple estate under a recorded instrument of sale.

(2) In order to file a joint application, all qualifying joint property owners must:

(a) Be 62 years of age or older on or before April 15 of the year in which the claim is filed;

(b) Either own or be purchasing the fee-simple estate with a right of survivorship under a recorded instrument of sale;

(c) Live on the property, except for an applicant's absence due to health related reasons; and

(d) Apply for the deferral jointly.

(3) For the purpose of this rule, ORS 310.630 defines household income. The combined household income for individuals and their spouses or all joint applicants applying for deferral must be less than the following limits:

(a) For applications filed in the calendar year 2002 for the deferral of 2002-2003 property taxes, the total household income limit for the income tax year 2001 is \$32,000.

(b) For applications filed in the calendar year 2003 and later, the total household income limit for the prior year is adjusted, based on the application of the U.S. City Average Consumer Price Index as provided in ORS 311.668(7). The Department of Revenue will publish the total household income limit each year in the deferral application.

(4) To confirm that the taxpayer continues to qualify for the program, the department may request from the taxpayer or the taxpayer's representative additional written information relating to continued program eligibility. Failure to provide the information as requested may disqualify the property from continued deferral.

(5) If the department determines that the property does not continue to qualify for property tax deferral, it will send the taxpayer a Notice of Disqualification. The taxpayer will have 90 days from the date he or she becomes aware of the disqualification, or no later than one year from the date of the determination, whichever comes first, to appeal to the Oregon Tax Court as provided in ORS 305.280.

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

Stat. Auth.: ORS 305.100 & 311.668

Stats. Implemented: ORS 311.668

Hist.: RD 1-1995, f. 12-29-95, cert. ef. 12-31-95, Renumbered from 150-311.670; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02, Renumbered from 150-311.668; REV 1-2003, f. & cert. ef. 7-31-03; REV 2-2005, f. 6-27-05, cert. ef. 6-30-05

## 150-321.005(12)

### Timber Subject to the Forest Products Harvest Tax: Measurement Standards

(1) Timber subject to the Forest Products Harvest Tax is the following:

(a) All logs which can be measured in board feet and meet the requirements of utility cull or better.

(A) Logs must be measured in western Oregon by the current edition of Official Rules for the following Log Scaling and Grading Bureaus:

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Columbia River, Northern California, Pacific Rim, Southern Oregon, Yamhill, developed by the Northwest Log Rules Advisory Group (NWL-RAG). All sections of the publication are recognized including the Appendix.

(B) Logs must be measured in eastern Oregon by the Scribner Decimal "C" Eastside Short Log Rule, using the NWLRAG Eastside Log Scaling Handbook, First Edition 2003.

(b) Logs chipped in the woods, except chips produced from material not meeting log merchantability standards in subsection (a) above and used as hog fuel.

(c) Loads of logs measured in tons and sold by the weight that contain utility grade and better logs. Logs must be reported on the timber tax return by thousand board feet (MBF). Logs must be converted from tons to MBF using conversion factors established by the Department of Revenue. These conversion factors are listed on the tax forms and instructions sent out annually by the department:

(A) When less than 10 percent of the load's log count comes from logs that have an 8-inch or larger scaling diameter, the "Chip Log" conversion factor will be used for converting tons to MBF for tax reporting.

(B) When 10 percent or more of the load's log count comes from logs that have an 8-inch or larger scaling diameter, the "Small Saw Logs" conversion factor will be used for converting tons to MBF for tax reporting.

(2) Timber not subject to Forest Products Harvest Tax is secondary products, other than chips, manufactured in the woods and produced from logs normally left in the forest or burned as slash. Examples are shake or shingle bolts, fence posts, firewood, and arrow bolts.

(3) When timber is harvested from the eastside, but scaled using westside log scaling rule, the volume must be adjusted to reflect the eastside log scaling rule volume. Taxpayers may use their own conversion factors if they are supported by statistically sound sample data; otherwise, the westside volume must be multiplied by 1.28 to get the equivalent eastside scaled volume.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.005

Hist.: 10-7-85, 12-31-85; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 6-2003, f. & cert. ef. 12-31-03; Renumbered from 150-321-005, REV 2-2005, f. 6-27-05, cert. ef. 6-30-05

## 150-321.609(1)-(A)

### Measuring Harvested Timber

(1) Definitions for purposes of this rule:

(a) "Check Scaling" is the procedure for verifying that an entity's scaling practices comply with the Official Log Scaling Rules.

(b) "Grading" means determining the quality of logs, considering such factors as gross diameter, length of log, surface characteristics, annual ring count, slope of grain and other factors as reflected in the Official Log Scaling Rules.

(c) "Harvest Unit" is a contiguous geographical area from which timber is harvested that has the following characteristics:

(A) The unit is entirely within one county;

(B) The unit is not larger than 320 acres;

(C) The unit is under one ownership;

(D) The unit is limited to harvest by one method (e.g., clearcut, thinning); and

(E) Operations within a harvest unit may not be farther than one mile apart.

(F) The department may grant exceptions to these criteria upon written request.

(d) "Measuring" means the determination of the quantity and quality of logs. Measuring must happen at the time of transfer of ownership of the logs and is the responsibility of the timber owner.

(e) "Official Log Scaling Rules" are those rules developed by the Northwest Log Rules Advisory Group as reflected in the most current edition of Official Rules for the following Log Scaling and Grading Bureaus: Columbia River, Northern California, Pacific Rim, Southern Oregon, Yamhill.

(f) "Sample Scaling" means to measure a portion of a weighed log inventory and apply the statistical information of the selection to the entire inventory.

(g) "Scaling" means the measurement of the gross and net volume of logs as determined by using the Official Log Scaling Rules.

(2) Measurement of scaled logs must:

(a) Be done using the Official Log Scaling Rules and must be determined by one of the following persons:

(A) Scalers of third party scaling organizations that:

(i) Assure its scalers produce consistent scaling results;

(ii) Assure its scalers will exercise independent judgment;

(iii) Have a training and certification program for its scalers;

(iv) Check scale a minimum of eight loads every two months for each employee scaling and grading logs subject to timber taxes under ORS 321.005-185, 321.700-754, and 321.805-855 within a 5 percent tolerance of the log volumes; and

(v) Make check-scale records available to the department upon request.

(B) Scalers employed by companies who are check scaled by a third-party scaling organization, or company check scalers employed by a company that:

(i) Meets all the requirements listed in paragraph 2(a)(A) of this rule; and

(ii) Provides a rescale and training in the event of an unsatisfactory check scale;

(iii) Provides total volume by grade and species by harvest unit for the period between an unsatisfactory check scale and the next satisfactory check scale at the request of the department; and

(iv) Allows the department to independently check scale.

(C) Scalers employed by companies with less than four scalers who each scale less than 50 thousand board feet per week if approved by the department. The company must:

(i) Make a written request to the department which includes:

(I) Name, duties and experience of the scaler;

(II) Type of logs scaled;

(III) Scaling instructions;

(IV) A description of the scaling location;

(V) An explanation of how the scaling information is secured to prevent loss or tampering of information; and

(VI) Provisions for check scaling.

(ii) If requested by the department, provide training specific to the type of logs delivered to the scaling point.

(D) Check scalers who meet the following qualifications:

(i) Be a qualified scaler with five plus years experience scaling logs;

(ii) Participate in an effective training and certification program that is recognized by one of the bureaus that is a member of the Northwest Log Rules Advisory Group;

(iii) Demonstrate proficiency with the Official Log Scaling Rules; and

(iv) Makes record of qualifications, training and certification available upon request.

(b) Be recorded on original scaling and grading load tickets that contain the following information:

(A) Name of log seller (taxpayer),

(B) Date of measurement,

(C) Name of log purchaser,

(D) Log brand,

(E) Log species,

(F) Log Grade,

(G) Number of logs,

(H) Gross log measurements, deductions and net volume, and

(I) Trip ticket number.

(3) Measurement of weighed logs must:

(a) Be done by an employee of a delivery facility who has been instructed on the proper use of the equipment listed in subsection (3)(b) of this rule.

(b) Use weigh instruments or devices that are tested, certified or licensed by the Oregon State Department of Agriculture under ORS 618.020, 618.016, 618.121 and 618.151.

(c) Be recorded on original load tickets which contain the following information:

(A) Name of log seller (taxpayer);

(B) Name of log purchaser;

(C) State Forestry (harvest) permit number;

(D) Trip ticket (or woods trip receipt number);

(E) Date of measurement;

(F) Location of measurement;

(G) Scaling organization or company doing the weighing;

(H) Weight ticket number;

(I) Gross, tare and net weights.

(4) A taxpayer may use "sample scaling" to determine the volume and grade of logs harvested.

(a) Sample scaling must be done on a harvest unit basis and the following criteria must be met:

(A) Must meet the criteria of section (2) of this rule;



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(B) The number of loads scaled (the sample intensity) must ensure that 95 percent of the time the average volume of a scaled load falls within 5 percent of the average volume of all sampled loads for the harvest unit.

(C) Samples must be selected through a random, unbiased method.

(D) Samples must be taken over the entire period of harvest.

(E) Once a load has been selected for the sample, it cannot be removed.

(b) Sampling methodology that does not meet the criteria of subsection (4a) of this rule may be used if submitted in writing and approved by the department prior to use.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.609

Hist.: REV 2-2005, f. 6-27-05, cert. ef. 6-30-05

## 150-321.700(13)

### Timber Subject to the Small Tract Forestland Severance Tax

(1) Timber subject to the Small Tract Forestland Severance Tax is the following:

(a) All logs that can be measured in board feet and meet the requirements of sawmill grades or better.

(A) Logs must be measured in western Oregon by the current edition of Official Rules for the following Log Scaling and Grading Bureaus: Columbia River, Northern California, Pacific Rim, Southern Oregon, Yamhill, developed by the Northwest Log Rules Advisory Group (NWL-RAG). All sections of the publication are recognized including the Appendix.

(B) Logs must be measured in eastern Oregon by the Scribner Decimal "C" Eastside Short Log Rule, using the NWLRAG Eastside Log Scaling Handbook, First Edition 2003.

(b) Logs measured in tons and sold by the weight when they meet the conditions of (A) or (B) below. Logs must be reported on the timber tax return by thousand board feet (MBF). Logs must be converted from tons to MBF using conversion factors established by the Department of Revenue. These conversion factors are listed on the tax forms & instructions sent out annually by the department.

(A) The loads of logs contain a minimum of 20 percent of the log count at 5-inch, 6-inch and 7-inch scaling diameter. The "Chip Logs" conversion factor will be used to convert this type of load from tons to thousand board feet (MBF) for tax reporting.

(B) Loads of logs in which all logs measure 5-inch scaling diameter and larger, or the load contains three or more logs with 8-inch or larger scaling diameter. The "Small Saw Logs" conversion factor will be used to convert this type of load from tons to MBF for tax reporting.

(c) Logs chipped in the woods, except chips produced from material not meeting log merchantability standards in subsection (a) above and used as hog fuel.

(2) Timber not subject to Small Tract Forestland Severance Tax is secondary products, other than chips, manufactured in the woods and produced from logs normally left in the forest or burned as slash. Examples are shake or shingle bolts, fence posts, firewood and arrow bolts.

(3) When timber is harvested from the eastside, but scaled using westside log scaling rule, the volume must be adjusted to reflect the eastside log scaling rule volume. Taxpayers may use their own conversion factors if they are supported by statistically sound sample data; otherwise, the westside volume must be multiplied by 1.28 to get the equivalent eastside scaled volume.

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

Stat. Auth.: ORS 305.100, 321.609 & 321.700

Stats. Implemented: ORS 321.700

Hist.: REV 6-2003, f. & cert. ef. 12-31-03; Renumbered from 150-Oregon Laws 2003, Ch. 454, Section 1(13); REV 5-2004, f. 7-30-04, cert. ef. 7-31-04; REV 2-2005, f. 6-27-05, cert. ef. 6-30-05

## 150-457.450(1)

### Notice of Plan Adoption or Area Change

An urban renewal agency's notice to the assessor of a plan adoption or amendment to a plan area must provide the following information:

(1) A legal description of the plan area boundary, or the boundary of the amended area of the plan, that includes the information required by ORS 308.225(2)(b);

(2) An accurate map showing the boundary line of the plan area or the boundary of the amended area of the plan;

(3) The date the plan or plan amendment was approved; and

(4) The name of the plan area.

Stat. Auth.: ORS 305.100.

Stats. Implemented: ORS 457.450(1).

Hist.: REV 2-2005, f. 6-27-05, cert. ef. 6-30-05

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

**Adm. Order No.:** DMV 16-2005(Temp)

**Filed with Sec. of State:** 6-17-2005

**Certified to be Effective:** 6-17-05 thru 12-13-05

**Notice Publication Date:**

**Rules Amended:** 735-062-0030, 735-062-0105, 735-062-0110, 735-062-0115, 735-062-0120, 735-062-0135, 735-070-0010

**Subject:** As amended, OAR 735-062-0110 establishes the reasons a replacement driver license, driver permit or identification card may be issued by DMV. Section 1 of HB 2106 amends ORS 807.160 to authorize waiver of a fee for replacement of a driver permit under the circumstances described. DMV is also amending OAR 735-062-0105 that describes fee waiver requirements, to implement these statutory amendments. OAR 735-062-0030, 735-062-0105, 735-062-0115, 735-062-0120, 735-062-0135 and 735-070-0010 are amended to remove reference to "duplicate." The term is deleted by amended ORS 807.160, and, therefore, is no longer relevant to these rules.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 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 replacement 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.

(j) Oregon vehicle title or registration documents.

(j) Oregon voter registration card.

# ADMINISTRATIVE RULES

- (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; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05

## 735-062-0105

### Waiver of Replacement License or Driver Permit Fee

(1) For purposes of convenience, DMV will issue a replacement license, or driver permit and waive the license replacement fee if, after filing a driver license renewal application or a change of address form, a customer does not receive the driver license extension sticker or address change sticker.

(2) To receive the no-fee driver license or driver permit, the customer must:

- (a) Come in person to a DMV field office;
- (b) Show proof of current residence address, even if the address appears on the customer record; and

(c) Surrender the license or driver permit replaced to DMV.  
Stat. Auth.: ORS 184.616, 184.619 & 807.390  
Stat. Imp.: ORS 807.160 & 807.390  
Hist.: DMV 21-2001, f. & cert. ef. 10-18-01; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05

## 735-062-0110

### Replacement Driver Permits, Driver Licenses, and Identification Cards

(1) DMV will issue a replacement driver permit, driver license or identification card for one of the reasons listed in section (2) of this rule if a person meets the requirements set forth in ORS 807.160 and the person is eligible for the driver license, driver permit or identification card.

(2) DMV may issue a replacement driver license, driver permit or identification card when a person:

(a) Furnishes proof satisfactory to the department of the loss, destruction or mutilation of the person's driver license, driver permit or identification card.

(b) Changes residence address from the address noted on the person's driver license, driver permit or identification card.

(c) Is an officer or eligible employee who has requested, in accordance with ORS 802.250, that department records show the address of the person's employer.

(d) Changes names from the name noted on the person's driver license, driver permit or identification card.

(e) Is applying or is required to add or remove a restriction on the person's driver license or driver permit.

(f) Is applying or is required to add or remove an endorsement other than a motorcycle or farm endorsement on the person's driver license or driver permit.

(g) Furnishes proof satisfactory to the department or the department determines that the department made an error when issuing the person's driver license, driver permit or identification card.

(h) Surrenders the person's driver license that was issued without a photograph under OAR 735-062-0120 and requests a driver license with a photograph.

(i) Surrenders a driver license, driver permit or identification card to the department following a suspension and the person becomes eligible for driving privileges or an identification card.

(j) Has a driver license, driver permit or identification card that was confiscated by a police officer, a court or other agency and the person is eligible for a driver license, driver permit or an identification card.

(k) Requests to change any physical description, notation, photograph or signature on the driver license, driver permit, or identification card or to add or delete an anatomical donor designation.

(l) Surrendered an Oregon driver license or driver permit to the driver licensing agency of another state or jurisdiction and the person again becomes domiciled in or a resident of Oregon, as long as the person remains eligible for driving privileges and the driver license or permit has not been expired for longer than one year. This subsection does not apply if the person is requesting a commercial driver license.

(m) Has a reason satisfactory to DMV to be issued a driver license, driver permit or identification card with a different distinguishing number than the one being replaced.

(n) Requests a downgrade from one license class to another (e.g., a Commercial Driver License to a non-commercial Class C driver license).

(o) Requests restoration of a Commercial Driver License following a suspension of the Commercial Driver License or a downgrade to non-commercial driving privileges and the person is eligible for commercial driving privileges.

(p) Requests to correct information on the driver license, driver permit or identification card that was provided to DMV in error.

(3) An applicant for a replacement driver license, driver permit, or identification card must present to DMV proofs of age and identity as set forth in OAR 735-062-0020.

(4) An applicant at a DMV field office for a replacement driver license, driver permit, or identification card that includes a change of residence address must also present to DMV one of the proofs of residence address listed in OAR 735-062-0030 that shows the person's current residence address. Current residence address is the address where the person actually lives and DMV will include that address on the license, permit, or identification card issued.

(5) Before issuing a replacement driver license or driver permit, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS), or both, to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. Before processing a replacement commercial driver license or commercial driver permit, DMV will make an inquiry to CDLIS to determine if the applicant has been issued a CDL in another jurisdiction.

(6) If the applicant's driving privileges are suspended, revoked, canceled or otherwise invalid in any other jurisdiction, DMV will not issue a replacement driver license or driver permit until the applicant submits a clearance letter that complies with OAR 735-062-0160 or a DMV inquiry to the NDR/PDPS or CDLIS, or both, shows that the applicant's driving privileges are reinstated or otherwise valid in the other jurisdiction.

(7) Notwithstanding section (5) of this rule, DMV will issue a replacement license or driver permit to an applicant whose driving privileges are suspended, revoked, canceled or otherwise invalid if the only remaining reinstatement requirement in the other jurisdiction is proof of future financial responsibility.

Stat. Auth.: ORS 184.616 & 184.619  
Stats. Implemented: ORS 807.160, 807.220, 807.230, 807.280 & 807.400  
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0013; DMV 24-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05

## 735-062-0115

### Non-Issue of a Duplicate Driver License Following Confiscation

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) shall not issue a driver license to a person whose driving record indicates a pending Implied Consent Law suspension under ORS 813.100.

(2) DMV shall issue a temporary driving permit, Form 45, instead of a driver license if the person is eligible for driving privileges.

(3) The permit issued under section (2) of this rule shall be valid until the Implied Consent Law suspension takes effect or until the person's driver license expires.

Stat. Auth.: ORS 802.010 & 813.110  
Stats. Implemented: ORS 807.160, 813.100 & 813.110  
Hist.: MV 5-1990, f. & cert. ef. 3-5-90; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05

# ADMINISTRATIVE RULES

## 735-062-0120

### Standards for Issuance of Driver's Licenses Without a Photograph

(1) The Manager of the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV), may, upon receipt of a written request, and for good cause, provide for issuance of a valid driver license without a photograph to any person qualified to hold an Oregon driver license:

- (a) Who is a member of a religious denomination that prohibits photographing of its members because it is contrary to its religious tenets;
- (b) Who has severe facial disfigurement; or
- (c) Who is temporarily absent from Oregon.

(2) Any person who receives a driver license without a photograph because of being temporarily absent from Oregon must make application to DMV within 30 days after returning to Oregon, surrender the license that was issued without a photograph, and pay for a replacement license bearing a photograph.

Stat. Auth.: ORS 802.010 & 807.110

Stats. Implemented: ORS 807.110

Hist.: MV 80, f. & ef. 10-4-77; MV 15-1986, f. 9-16-86, ef. 10-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0038; DMV 21-2001, f. & cert. ef. 10-18-01; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05

## 735-062-0135

### Voluntary Surrender of Driving Privileges

A person may surrender all or part of the driving privileges granted to that person by the State of Oregon, through the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV).

(1) To surrender all or part of a person's driving privileges, that person must sign a DMV form and must surrender to DMV any license or permit issued for the driving privilege. DMV will allow the person to surrender all driving privileges, or part of the driving privileges granted to that person under any class of license, endorsement or driver permit.

(2) When driving privileges are surrendered, the driving privileges are immediately withdrawn and the person is no longer authorized to operate vehicles pursuant to those driving privileges. A person who surrenders all driving privileges may not exercise any driving privileges, except those granted by statute under ORS 807.020. A person who surrenders part of the person's driving privileges may exercise only those driving privileges retained. Operation of a vehicle on Oregon highways or premises open to the public without appropriate driving privileges is a violation of law under ORS 807.010.

(3) In accordance with OAR 735-062-0010, DMV may issue an identification card to a person who has surrendered all driving privileges.

(4) A person may surrender only part of the driving privileges granted by DMV by canceling any endorsements or driver permits granted to the person. The person must specify those driving privileges the person seeks to surrender. A person who surrenders an endorsement must pay the renewal or replacement license fee for issuance of a license that reflects the driving privileges the person retains.

(5) Surrender of driving privileges means the driving privileges are canceled as defined in ORS 801.175(2). When a voluntary surrender of driving privileges is accepted, DMV will cancel driving privileges without providing further notice or an opportunity for hearing to the person. The person's driving record will show that the driving privileges have been surrendered.

(6) A person who seeks to regain surrendered driving privileges must reapply for the privileges and establish eligibility and qualification as provided by law, including payment of all required fees.

Stat. Auth.: ORS 184.616 & 184.619

Stats. Implemented: ORS 802.010(1)(c)

Hist.: DMV 1-2003, f. & cert. ef. 2-13-03; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05

## 735-070-0010

### Reinstatement Following Cancellation or Suspension Under ORS 807.220, 807.230, 809.310, and 809.320

(1) DMV will reissue the driver permit, driver license or identification card canceled because the person is not entitled to a license, permit or identification card under ORS 809.310(1) to the person only after the person corrects the condition that caused the cancellation. For example, the person must prove he or she no longer has driving privileges withdrawn by another jurisdiction if the cancellation was based on a suspension or revocation of the person's driving privilege in another jurisdiction.

(2) DMV will reinstate the person's driving privileges or right to apply for privileges or an identification card or right to apply for a card when DMV suspends a person's driver permit, driver license or identification card for any of the reasons cited in ORS 809.310(3) when:

(a) One year has elapsed since the date the suspension became effective; and

(b) The person pays a reinstatement fee.

(3) When DMV cancels a person's driver permit or driver license for withdrawal of consent under ORS 809.320, DMV will reinstate driving privileges when the person:

(a) Pays a replacement driver permit or driver license fee or a renewal fee, if applicable; and

(b) Submits one of the following if the person is still under 18 years of age:

(A) An application for a driver permit or driver license that is signed by the person's mother, father or guardian, or if the person has no mother, father or guardian, by the person's employer;

(B) Court papers showing that the person is declared emancipated by the court; or

(C) Evidence that the person is married.

(4) When DMV cancels a person's driving privileges because the person is not qualified or does not meet the requirements under ORS 807.350, DMV will not grant driving privileges until the person meets the requirements and demonstrates qualification for a driver license under ORS 807.040, 807.060, 807.062, 807.065, 807.066 and 807.070.

(5) When a person's student or emergency driver permit is canceled, DMV will reissue a new driver permit or driver license only when the person meets the requirements in ORS 807.040, 807.065 and 807.066 and OAR 735-062-0000 to obtain a driver permit or driver license.

Stat. Auth.: ORS 184.616

Stats. Implemented: ORS 807.220, 807.230, 807.400, 809.310 & 809.320

Hist.: MV 16-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0064; MV 14-1992, f. & cert. ef. 10-16-92; MV 18-1993, f. 12-17-93, cert. ef. 1-1-94; DMV 16-1994, f. & cert. ef. 12-20-94; DMV 3-2002, f. & cert. ef. 3-14-02; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05

## Department of Transportation, Highway Division Chapter 734

**Adm. Order No.:** HWD 5-2005

**Filed with Sec. of State:** 6-16-2005

**Certified to be Effective:** 6-16-05

**Notice Publication Date:** 5-1-05

**Rules Amended:** 734-020-0220

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

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 734-020-0220

### Yield Sign Placement

The yield sign shall be located on the rear of the bus, to the left of center and in the lower two-thirds. Preferably the yield sign would be located next to or near the left turn indicator lamp. If receiving or discharging passengers to the left side of the bus and entering traffic lanes to the right, the sign shall also be placed right of center in the lower two thirds, preferably next to or near the right turn indicator lamp. A transit agency may place a single sign near the center of the rear of the bus, in the lower two thirds of the bus, which would signal for right and left merges, instead of having two separate signs.

Stat. Auth.: ORS 184.616, 184.619 & 811.167

Stats. Implemented: ORS 811.167

Hist.: TO 3-1998, f. & cert. ef. 4-16-98; HWD 5-2005, f. & cert. ef. 6-16-05



# ADMINISTRATIVE RULES

## Employment Department Chapter 471

**Adm. Order No.:** ED 3-2005(Temp)

**Filed with Sec. of State:** 6-24-2005

**Certified to be Effective:** 6-24-05 thru 12-17-05

**Notice Publication Date:**

**Rules Amended:** 471-030-0150

**Subject:** The Employment Department is amending: OAR 471-030-0150 to align with HB 2662 Enrolled (2005 Session), which changes the laws used to determine eligibility for Unemployment Insurance benefits.

**Rules Coordinator:** Richard L. Luthe—(503) 947-1724

### 471-030-0150

#### Domestic Violence

(1) As used in ORS 657.176(12) and for purposes of this rule, “minor child” means an unmarried person under 18 years of age, including a stepchild or adopted child.

(2) As used in ORS 657.176(12), “domestic violence” means the physical injury, sexual assault or forced imprisonment, or threat thereof, of a person by another who is related by blood or marriage or has a significant relationship with the other person at the present, or who has been related or has had a significant relationship at some time in the past, to the extent that the person’s health, safety or welfare is harmed or threatened thereby.

(3) As used in ORS 657.176(12), “stalking” means:

(a) The person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person or a minor child in the household thereby alarming or coercing the other person;

(b) It is objectively reasonable for a person in the victim’s situation to have been alarmed or coerced by the contact; and

(c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a minor child in the household.

(4) As used in ORS 657.176(12), “sexual assault” means any unwanted touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(5) As used in ORS 657.176(12), the term “reasonable available alternatives” as used in this section means whatever action or series of actions, that in the perception of the individual, best guarantee the safety of the individual or the minor child.

Stat. Auth.: ORS 657.176 & 657.610

Stats. Implemented: ORS 657.176 & HB 2767 (OL 2001)

Hist.: ED 13-2001, f. 11-2-01, cert. ef. 11-4-01; ED 3-2005(Temp), f. & cert. ef. 6-24-05 thru 12-17-05

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**Adm. Order No.:** ED 4-2005(Temp)

**Filed with Sec. of State:** 7-5-2005

**Certified to be Effective:** 7-5-05 thru 12-17-05

**Notice Publication Date:**

**Rules Amended:** 471-030-0150

**Rules Suspended:** 471-030-0150(T)

**Subject:** The Employment Department is amending: OAR 471-030-0150 to align with HB 2662 Enrolled (2005 Session), which changes the laws used to determine eligibility for Unemployment Insurance benefits. The rule has been made retroactive to the effective date of the bill, which is June 20th, 2005.

**Rules Coordinator:** Richard L. Luthe—(503) 947-1724

### 471-030-0150

#### Domestic Violence

(1) As used in ORS 657.176(12) and for purposes of this rule, “minor child” means an unmarried person under 18 years of age, including a stepchild or adopted child.

(2) As used in ORS 657.176(12), “domestic violence” means the physical injury, sexual assault or forced imprisonment, or threat thereof, of a person by another who is related by blood or marriage or has a significant relationship with the other person at the present, or who has been related or has had a significant relationship at some time in the past, to the extent that the person’s health, safety or welfare is harmed or threatened thereby.

(3) As used in ORS 657.176(12), “stalking” means:

(a) The person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person or a minor child in the household thereby alarming or coercing the other person;

(b) It is objectively reasonable for a person in the victim’s situation to have been alarmed or coerced by the contact; and

(c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a minor child in the household

(4) As used in ORS 657.176(12), “sexual assault” means any unwanted touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(5) As used in ORS 657.176(12), the term “reasonable available alternatives” as used in this section means whatever action or series of actions, that in the perception of the individual, best guarantee the safety of the individual or the minor child.

(6) The effective date for implementing this rule shall be retroactive to June 20th, 2005.

Stat. Auth.: ORS 657.176 & 657.610

Stats. Implemented: ORS 657.176 & HB 2767 (OL 2001)

Hist.: ED 13-2001, f. 11-2-01, cert. ef. 11-4-01; ED 3-2005(Temp), f. & cert. ef. 6-24-05 thru 12-17-05; ED 4-2005(Temp), f. & cert. ef. 7-5-05 thru 12-17-05

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**Adm. Order No.:** ED 5-2005

**Filed with Sec. of State:** 7-15-2005

**Certified to be Effective:** 7-17-05

**Notice Publication Date:** 3-1-05

**Rules Adopted:** 471-020-0025

**Subject:** The Employment Department is adopting: OAR 471-020-0025 to establish parameters for the Self-employment assistance program.

**Rules Coordinator:** Richard L. Luthe—(503) 947-1724

### 471-020-0025

#### Self-employment Assistance Program

(1) As used in ORS 657.158(1)(b), “entrepreneurial training” means training that will develop skills in organizing, operating, and assuming the risk for a business venture.

(2) As used in ORS 657.158(3)(d), “full-time basis” means 40 hours each week.

(3) Any individual eligible for “regular benefits,” as defined in ORS 657.158(1)(a), can request to participate in self-employment assistance activities in accordance with ORS 657.158.

(4) Any individual submitting an Application Form to participate in the Self-employment Assistance Program agrees to:

(a) Meet the terms and conditions of ORS 657.156 and 657.158, and OAR 471-030-0034;

(b) Obtain any necessary occupational certifications prior to submitting the Application Form. The Director may waive this requirement when such requirement would be inconsistent with the policy set forth in ORS 657.158; and

(c) Affirm that they are able to complete their initial business plan within a reasonable time, as determined by the local Oregon Small Business Development Center Network representative, in consultation with the Employment Department.

(5) All applications for the Self-employment Assistance Program must:

(a) Be for a business that is legal to operate under Oregon law;

(b) Be for a business that the individual is legally able to operate under Oregon law;

(c) Be for a business that has been reviewed for feasibility by the local Oregon Small Business Development Center Network representative, in consultation with the Employment Department.

Stat. Auth.: ORS 657.610, 657.158 & 657

Stats. Implemented: ORS 657.158

Hist.: ED 5-2005, f. 7-15-05, cert. ef. 7-17-05

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## Employment Department, Child Care Division Chapter 414

**Adm. Order No.:** CCD 2-2005(Temp)

**Filed with Sec. of State:** 6-16-2005

**Certified to be Effective:** 6-16-05 thru 12-13-05

**Notice Publication Date:**

# ADMINISTRATIVE RULES

**Rules Amended:** 414-700-0060

**Subject:** The Employment Department, Child Care Division, is revising: OAR 414-700-0060 to specify the percent that will be charged to families under ORS 657A.718(1)(g).

**Rules Coordinator:** Richard L. Luthe—(503) 947-1724

## 414-700-0060

### Participating Provider Eligibility Requirements

(1) To be eligible for disbursements under this program, child care providers shall:

- (a) Be regulated by the Child Care Division;
- (b) Accept children for whom child care is paid for through Department of Human Services subsidy;
- (c) Provide high quality child care as defined by the Child Care Division in collaboration with the Advisory Council;
- (d) Maintain adequate liability insurance, financial records and parent policies and contracts; and
- (e) Permit the community agency to conduct visits for monitoring purposes.

(2) If the provider is a home-based business, the provider shall meet the following requirements in addition to those in subsection (1) of this section:

- (a) Enter into an agreement with the community agency to continue to provide child care services for at least two additional years; and
  - (b) Provide care to children from at least two families that have incomes of 85 percent or less of the median income for the region.
- (3) If the provider is a child care center, at least 25 percent of the families served by the center must have incomes that are 85 percent or less of the median income for the region.
- (4) In selecting participating child care providers, selected community agencies must give preference to providers that provide child care to low and moderate income families.

(5) For care provided to children of families whose income does not exceed the level established in subsections (2) and (3) of this section, the fee charged to the family by an eligible provider shall not exceed ten percent.

Stat. Auth.: ORS 657A.706

Stats. Implemented: ORS 657A.700 - 657A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 2-2005(Temp), f. & cert. ef. 6-16-05 thru 12-13-05

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**Health Licensing Office,  
Board of Cosmetology  
Chapter 817**

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

**Filed with Sec. of State:** 6-17-2005

**Certified to be Effective:** 7-1-05

**Notice Publication Date:** 5-1-05

**Rules Amended:** 817-005-0005, 817-030-0018, 817-035-0010, 817-035-0030, 817-040-0003

**Subject:** Rules are based on passage of HB 2325 during the 2003 Legislative Session that corrected conflicting provisions in ORS Chapter 690 governing cosmetology and the practice of barbering, hair design, facial technology and nail technology. The law separates certification according to the field of practice for which an applicant receives training/education, passes competency testing, and is issued authorization to practice. Oregon Laws 2003, Chapter 547 became effective January 1, 2004. The revised fee schedule will convert the \$50 practitioner two-year certificate with bundled fields of practice to a \$33 fee for each certificate issued in a field of practice.

**Rules Coordinator:** Patricia C. Allbritton—(503) 378-8667, ext. 4322

## 817-005-0005

### Definitions

The following definitions apply to OAR Chapter 817, Divisions 1 through 120.

- (1) “*Acceptable*” means satisfactory or adequate; fulfilling the needs or requirements of a specified rule or provision.
- (2) “*Adequate ventilation*” means ventilation by natural or mechanical methods which removes or exhausts fumes, vapors, or dust to prevent hazardous conditions from occurring in accordance with OAR 437,

Division 2 and/or to allow the free flow of air in a room in proportion to the size of the room and the capacity of the room.

(3) “*Affidavit of Licensure*” means an original document verifying licensing history and status, including information disclosing all unresolved or outstanding penalties and/or disciplinary actions. The document is issued and signed by the regulatory authority in the state which issued the license with an official seal or stamp affixed to the document; it is not the certificate or license form issued which authorizes the holder to practice.

(4) “*Agency*” means the Health Licensing Office. The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

(5) “*Approved*” means accepted by the Board of Cosmetology or to the appropriate entity.

(6) “*Article*” means any item used in the practice of barbering, hair design, facial technology or nail technology, including but not limited to neck-strips, neck dusters, towels or linens, and cloth or plastic capes.

(7) “*Barbering*” means the area of practice the Board has certified an individual to engage in as defined in ORS Chapter 690.005(2).

(8) “*Board*” means, pursuant to ORS 690.155 and 690.165, the entity that determines practice standards, education and training, and provides consultation to the agency on all disciplinary actions in accordance with ORS 690.167.

(9) “*Career school*” means, pursuant to ORS 345.010(4), an establishment licensed under ORS Chapter 345, to teach barbering, hair design, facial technology or nail technology, or any combination thereof

(10) “*Certificate*” means the document authorizing the holder to perform services in a field of practice, i.e. barbering, hair design, facial technology or nail technology (see, respectively, sections (7), (32), (37), and (49) of this rule).

(11) “*Certificate of Identification*” means authorization allowing a practitioner to perform services of barbering hair design, facial technology or nail technology outside of a licensed facility and in a client’s residence or place of business.

(12) “*Chemical service*” means the use of any product which restructures or removes hair or changes the shape or appearance of skin, hair or nails.

(13) “*Clean*” means the absence of soil or dirt, or the removal of soil or dirt by washing, sweeping, clearing away, or any other appropriate method used as a preliminary process in rendering a sanitary condition as defined in subsection (62) of this rule.

(14) “*Cleanable*” means a surface that can be made clean as defined in subsection (13) of this rule.

(15) “*Commission*” means the Oregon Student Assistance Commission.

(16) “*Common area*” means an area of a facility which is used by all practitioners performing services, including, but not limited to reception areas, dispensing areas, sinks, shampoo bowls, hair dryers and hair dryer areas, and employee lounge areas.

(17) “*Communicable disease or condition*” means diseases or conditions diagnosed by a licensed physician as being contagious or transmittable which include but are not limited to the following:

- (a) Chickenpox;
- (b) Diphtheria;
- (c) Measles;
- (d) Meningococcal Disease;
- (e) Mumps;
- (f) Pertussis (whooping cough);
- (g) Plague;
- (h) Poison oak (a transmittable form of contact dermatitis);
- (i) Rubella;
- (j) Scabies;
- (k) Staphylococcal skin infection (boils, infected wounds);
- (l) Streptococcal infections (Strep throat);
- (m) Tinea (ring worm);
- (n) Tuberculosis.

(18) “*Deceit*” means to mislead others by attempting underhanded methods; to cause or influence others to accept as true or valid what is false or invalid; or, to give a false impression or appearance.

(19) “*Default loan status*” means a loan insured or guaranteed by the Oregon Student Assistance Commission which the borrower fails to pay in a satisfactory repayment manner as determined by the Commission and in accordance with federal regulations.

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(20) "*Demonstration permit*" means an authorization as defined in ORS 690.005(6) to practice on a limited basis for a maximum of 30 consecutive days.

(21) "*Dermis*" means the underlying or inner layer of the skin; the layer below the epidermis; the corium or true skin, including papillary layer, capillaries, tactile corpuscles, melanin (pigment), subcutaneous tissue, adipose or subcutis tissue, arteries and lymphatics.

(22) "*Director*" means the individual who is responsible for the performance of the agency as defined in ORS 676.610. The director appoints all subordinate officers and employees to carry out the duties of the agency.

(23) "*Disinfect*" means to use a process to destroy harmful organisms, including bacteria, viruses, germs and fungi.

(24) "*Dispensing area*" means an area having non-porous surfaces and a sink with hot and cold running water where service preparations are conducted, such as mixing of chemicals, cleaning of tools and equipment, disposing of residues and rinsing parts of the body exposed to chemicals.

(25) "*Disposable towels*" means single-use paper towels or roller-tape cloth towels furnished by laundries.

(26) "*EPA*" means Environmental Protection Agency, a branch of the Federal Government, which approves and registers chemical compounds and agents.

(27) "*Epidermis*" means the outermost layer of the skin; the outer epithelial portion of the skin, including stratum corneum, stratum lucidum, stratum granulosum, stratum spinosum (prickle cell layer), stratum mucosum and stratum germinativum.

(28) "*Equipment*" means those items needed to run a facility which includes but is not limited to waiting chairs, barber or style chairs, shampoo chairs, cabinets, sinks, shampoo bowls, stationary dryers, pedi bins or whirlpool foot spas, paraffin wax containers, and nail technology tables.

(29) "*Ethical*" means conforming to professional standards of conduct in all occupational practices and in accordance with OAR 817, Division 120.

(30) "*Excessive*" means to exceed the acceptable standard.

(31) "*Exfoliate or exfoliation*" means the process of sloughing off, removing, or peeling dead skin cells of the epidermis.

(32) "*Facial technology*" means the definition of facial technology in ORS Chapter 690.005(7), which includes the following practices:

(a) The application of lotions during electro-muscular stimulation;

(b) Removal of lanugo or superfluous hair by the application of wax or chemicals;

(c) Temporary removal of unwanted hair by an electrical tweezer device other than that codified in the law governing electrolysis.

(33) "*Facility*" means an establishment in which practitioners perform acts of barbering, hair design, facial technology or nail technology, or any combination thereof.

(34) "*Field of practice*" means any of these disciplines: barbering, hair design, facial technology and/or nail technology.

(35) "*Fire retardant container*" means an air-tight metal or other approved container recognized by a national testing lab for the use of disposing of chemical waste or storing linens with chemical residue.

(36) "*Fraud*" means the intentional act of deceiving or cheating; a willful violation (refer to ORS 646 "Trade Regulations and Practice").

(37) "*Hair design*" means the definition of Hair Design in ORS 690.005(10), includes the braiding of hair.

(38) "*Health Licensing Office*" means the agency.

(39) "*High-level disinfectant*" means a chemical agent, which has demonstrated tuberculocidal activity and is registered with the EPA.

(40) "*Incompetency*" means performance from which it may be concluded that the person either lacks or did not employ the knowledge and skill necessary to practice in an acceptable manner.

(41) "*Independent Contractor*" means an individual defined in ORS 690.005(11) who qualifies for a recognized business status under the provisions of ORS 670.600.

(42) "*License*" means a document to operate a facility as defined in ORS 690.005(12).

(43) "*Licensed health care facility*" means a facility as defined by ORS 442.015(16), such as a hospital, special inpatient care facility, rehabilitation center, center for the treatment of alcoholism or drug abuse, assisted living care or nursing facility, or psychiatric hospital, which is licensed by a state regulatory agency or local governmental unit for the purpose of providing health care services.

(44) "*Low-level disinfectant*" means a chemical agent which has demonstrated bactericidal, germicidal, fungicidal, and limited virucidal activity and is registered with EPA.

(45) "*Manicuring*" means services performed upon the nails of the hands as part of nail technology defined in ORS 690.005(13).

(46) "*Manipulation*" means, as referred to in ORS 690.005(7) and (13), the articulation or massage of the spine above the seventh (7th) vertebra, or of the hands or feet, for cosmetic purposes only and not for the treatment of disease or physical or mental ailments.

(47) "*Materials and supplies*" means those items which complement the use of tools, including but not limited to hair tints, bleaches, permanent wave solutions, tonics, hair oils, shampoos, rinses, disinfectants, and chemicals.

(48) "*Misconduct*" means performing in an unethical, unprofessional or dishonest manner; or, acts involving violence against persons.

(49) "*Nail Technology*" means the definition of nail technology in ORS 690.005(13), which includes the following:

(a) The application and removal of artificial nails;

(b) The application of mini-art work, etching or imprinting on nails.

(50) "*Negligence*" means failure to exercise care in the safety and sanitary methods relating to ORS Chapter 690.

(51) "*Non-absorbent*" means incapable of absorbing or entrapping water or other liquids.

(52) "*Official transcript*" means an original document certified by the career school indicating hours and types of course work, examinations and scores that the student has completed, which has been mailed by USPS or other recognized mail service provider directly to the agency by the career school in a sealed envelope, or authorized transcript transmitted directly to the Health Licensing Office in a manner approved by the board.

(53) "*Pedicuring*" means services performed upon the nails of the feet as part of nail technology defined in ORS 690.005(13).

(54) "*Permit*" means either a demonstration permit as defined in subsection (20) or a temporary facility permit as defined in subsection (69) of this rule.

(55) "*Practitioner*" means any person whom the Board has certified to perform services on the public in any field of practice as defined in subsection (34) of this rule.

(56) "*Premises*" means the entire area of the facility, which the Board has licensed and designated as a facility.

(57) "*Probation*" means continuation of certification, licensure, registration and/or permit under conditions set by the agency.

(58) "*Public view*" means open to view and easy for the public to see.

(59) "*Reasonably accessible*" means not more than three minutes travel time from any work location.

(60) "*Reciprocity*" means that an applicant, holding an active certificate or license in another state, meets the applicable qualifications and requirements pertaining to minimum competency through satisfactory completion of a national written and practical examination recognized and/or approved by the Board.

(61) "*Registration*" means an authorization to practice in barbering, hair design, facial technology and/or nail technology as an independent contractor.

(62) "*Sanitary*" means free of agents of infection, disease, or infestation by insects and vermin and free of soil, dust, or foreign material; referring to cleanliness.

(63) "*Sanitized*" means rendered free of soil, dust, foreign material, and agents of disease or infestation by insects or vermin through the use of effective cleaning.

(64) "*Sanitizing container*" means a receptacle, holding a disinfecting agent, which is large and deep enough to submerge the tool(s) or implement(s) or portion(s) thereof, which are to be disinfected.

(65) "*Sharp edged or pointed, non-electrical tools and implements*" means those items which may on occasion pierce or cut the skin and draw blood, includes razors, cuticle nippers, cuticle pushers, nail clippers, tweezers, comedone extractors, shears, and metal nail files.

(66) "*Soiled*" means an article that has been used and has not been cleaned or disinfected before use on the next client.

(67) "*Supervise*" means to oversee, direct, or be in charge of the activities or the flow of work in a facility.

(68) "*Suspend*" means, as used in ORS 690.075, to place a certificate, license, registration and/or permit in an inactive status for an unspecified period of time due to disciplinary action taken under ORS 25.750 to 25.783, 305.385, 348.393 to 348.399, or 690.075.

(69) "*Temporary facility permit*" means an authorization as defined in ORS 690.005(17), not to exceed 30 consecutive days.

(70) "*Tools and implements*" means all portable instruments and accessories, which the practitioner can carry to use in the performance of



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services on clients, including but not limited to combs, shears, clippers and yoyettes.

(71) "Water supply" means a source of water other than that provided by sinks located in restrooms.

(72) "Wash basin/shampoo bowl" means a basin or similar vessel used exclusively for washing of hands, arms, face and head.

(73) "Work area" means an area where services are performed and preparations are conducted including but not limited to shampoo area, work stations and dispensing area.

Stat. Auth.: ORS 690.165 & 690.205(1)

Stats. Implemented: ORS 690.165 & 690.105(1)

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1982, f. & ef. 1-29-82; BH 2-1982, f. & ef. 3-31-82; BH 1-1983(Temp), f. & ef. 10-4-83; BH 4-1984, f. & ef. 12-7-84; Renumbered from 817-010-0002; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. & ef. 1-1992, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 2-1996, f. 6-28-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2002, f. 5-31-02, cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2005, f. 6-17-05, cert. ef. 7-1-05

## 817-030-0018

### Examination for Reinstatement of Certification

To reinstate a certificate, which has expired beyond two years, an applicant must meet the requirements of ORS 690.085(5) and OAR 331-030-0000, submit required documentation to the agency and complete the following requirements:

(1) A completed application form prescribed by the agency with the applicant's expired certificate number(s);

(2) A completed official practical examination transcript issued by the appropriate Oregon licensed career school in the manner specified in OAR 817-005-0005(52);

(3) Payment of the required application and examination fees;

(4) Payment of the required certificate fee for each field of practice certification is applied for;

(5) Passing score on the Board approved written examination(s);

(6) Passing score on the practical examination from an Oregon licensed career school within two years from the date of application.

Stat. Auth.: ORS 690.035, 690.046, 690.048 & 690.165

Stats. Implemented: ORS 690.035, 690.046, 690.048 & 690.165

Hist.: BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2005, f. 6-17-05, cert. ef. 7-1-05

## 817-035-0010

### Issuance and Renewal of Certificates, Licenses and/or Registrations

(1) Individuals will be subject to the provisions of ORS 690.046, 690.055, 690.057, 690.085 and OAR 331-030-0010 for issuance and renewal of certificates, licenses and registrations.

(2) An applicant whose renewal payment is received by the agency, or is postmarked, after the expiration date will be assessed a late renewal fee, as specified in ORS 690.085(4). A late renewal fee of \$25 for each year in expired status will be required to renew a certificate, license or registration.

(3) Practitioners who fail to renew a certificate within two years from the expiration date must reapply and meet requirements of ORS 690.085(5) and OAR 331-030-0000.

(4) Independent contractors who fail to renew their registration within one year from the date of expiration must reapply and pay the application and registration fees.

(5) The agency may also request that applicants provide their Social Security number at the time of renewal.

(6) Practitioner Certificates. When renewing a certificate, applicants must provide the following information to the agency:

(a) Name and current residential or mailing address;

(b) Certificate number and expiration date;

(c) Residence area code and telephone number;

(d) Date of birth;

(e) Selection of field(s) of practice for renewal to maintain active certification;

(f) The name, address, telephone number and facility license or independent contractor registration number where services are being performed, or other work location where service is performed;

(g) Social Security Card.

(7) Independent Contractor Registration. When renewing an independent contractor registration, applicants must provide the following information to the agency:

(a) Independent contractor registration number and expiration date;

(b) Assumed Business Name if using name other than full legal name in business;

(c) Name, address and license number of facility where working under lease agreement, or business mailing address;

(d) Residential address;

(e) Business area code and telephone number; and

(f) Information regarding whether actively engaged in performing services within a field(s) of practice.

(8) Facility Licenses. When renewing a facility license, applicants will be subject to requirements of ORS 690.085(2) and (4). Applicants must provide the following information to the agency at the time of renewal;

(a) Facility license number and expiration date;

(b) Name and place of business, or business mailing address;

(c) Business area code and telephone number; and

(d) Whether regulated services outside the scope of ORS 690.005 to 690.235 are being performed within the premises of the facility. Such services include but are not limited to electrology, tanning, ear and body piercing, or tattooing, i.e. permanent makeup.

Stat. Auth.: ORS 676.605, 676.615, 690.085 & 690.165

Stats. Implemented: ORS 676.605, 676.615, 690.085 & 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-040-0015, BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2005, f. 6-17-05, cert. ef. 7-1-05

## 817-035-0030

### Document Issuance

(1) Pursuant to ORS 690.048, an individual will be issued a certificate authorizing the holder to practice barbering, hair design, facial technology or nail technology upon passage of the qualifying examination(s) required in OAR 817-030-0045 and payment of an initial certificate fee for each field of practice.

(2) Certificate, license and registration holders are subject to provisions of OAR 331-030-0010 regarding issuance and renewal of an authorization, and to provisions of OAR 331-030-0020 regarding authorization to practice and requirements for issuance of a duplicate authorization.

Stat. Auth.: ORS 676.615, 690.048, 690.123 & 690.165

Stats. Implemented: ORS 676.615, 690.048, 690.123 & 690.165

Hist.: BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; Renumbered from 817-030-0095; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2005, f. 6-17-05, cert. ef. 7-1-05

## 817-040-0003

### Fees

(1) Applicants and authorization holders are subject to provisions of OAR 331-010-0010 and 331-010-0020 regarding payment of fees, penalties and charges.

(2) Fees established by the Board are as follows:

(a) Application for a certificate, license, permit or registration (non-refundable): \$15.

(b) Original practitioner certificate (two-year) for each field of practice: \$50.

(A) Barbering: \$33;

(B) Hair Design: \$33;

(C) Facial Technology: \$33;

(D) Nail Technology: \$33;

(c) Renewal of practitioner certificate (two-year) for each field of practice:

(A) Barbering: \$33;

(B) Hair Design: \$33;

(C) Facial Technology: \$33;

(D) Nail Technology: \$33;

(d) Examination for certification (each attempt):

(A) Oregon Laws and Rules: \$10;

(B) Barbering: \$10;

(C) Hair Design: \$10;

(D) Facial Technology: \$10;

(E) Nail Technology: \$10.

(F) Certificate of identification (exam): \$15

(e) Original facility license: \$50.

(f) Renewal of facility license: \$50.

(g) Original independent contractor registration: \$50.

(h) Renewal of independent contractor registration: \$50.

(i) Annual Certificate of identification (authorization): \$50.

(j) Duplicate or replacement of a certificate, license, registration or permit: \$5.

(k) Late fees:

(A) Late practitioner certificate renewal fee: \$25 per year in expired status;

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- (B) Late facility license renewal fee: \$25;
  - (C) Late independent contract registration renewal fee: \$25;
  - (I) Demonstration permit: \$15.
  - (m) Reciprocity fee: \$50.
  - (n) Temporary facility permit: \$35.
- Stat. Auth.: ORS 676.605, 676.615 & 690.235  
Stats. Implemented: ORS 676.605, 676.615, 690.235 & 30.701  
Hist.: BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 1-1990(Temp), f. 4-20-90 & cert. ef. 6-1-90; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2005, f. 6-17-05, cert. ef. 7-1-05

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## Insurance Pool Governing Board Chapter 442

**Adm. Order No.:** IPGB 2-2005(Temp)

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

**Certified to be Effective:** 7-7-05 thru 1-1-06

**Notice Publication Date:**

**Rules Amended:** 442-004-0010, 442-004-0040, 442-004-0050, 442-004-0070, 442-004-0080, 442-004-0117, 442-004-0120, 442-004-0170

**Subject:** IPGB is amending the above rules in order to implement policy changes making it easier for Oregonians to access the FHIAP program.

**Rules Coordinator:** Nicole Shuba—(503) 378-4676

### 442-004-0010

#### Definitions

(1) "Alien Status Requirement." A qualified non-citizen meets the alien status requirement for FHIAP if the individual is one of the following:

(a) A person who was admitted as a qualified non-citizen on or before August 22, 1996.

(b) A person who entered the U.S. on or after August 22, 1996 and it has been five years since he or she became a qualified non-citizen.

(c) A person who has obtained their qualified non-citizen status less than five years ago, but entered the U.S. prior to August 22, 1996. The non-citizen must show that he or she has been living in the U.S. continuously for five years from a date prior to August 22, 1996 to the date the non-citizen obtained their qualified status and did not leave during that five year period. If the non-citizen cannot establish the five-year continuous residence before he or she obtained their qualified status, the person is not considered to have entered the U.S. prior to August 22, 1996.

(d) Regardless when they were admitted, a person with one of the following designated statuses:

(A) A person who is admitted as a refugee under section 207 of the INA;

(B) A person who is granted asylum under section 208 of the INA;

(C) A person whose deportation is being withheld under section 243

(h) of the INA;

(D) A Cuban or Haitian entrant who is either a public interest or humanitarian parolee;

(E) A person who was granted immigration status according to the Foreign Operations Export Financing and Related Program Appropriation Act of 1988;

(F) A person who is a victim of a severe form of trafficking.

(e) Regardless of when they were admitted, a qualified non-citizen who is:

(A) A veteran of the U.S. Armed Forces, who was honorably discharged not on account of alien status and who fulfills the minimum active-duty service requirement; or

(B) On active duty in the U.S. Armed Forces (other than active duty for training).

(C) The spouse or unmarried dependent child of the veteran or person on active duty described in (e)(A) and (B).

(f) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) apply; or

(g) A member of an Indian tribe (as described in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(h) Any legal non-citizen who was approved for a FHIAP subsidy prior to November 1, 2004.

(2) "Appeal" means the opportunity for an applicant to request and receive administrative review by Board staff of a decision made or action

taken by the Third Party Administrator (TPA) or state agency regarding program eligibility, subsidy level, termination, re-enrollment, overpayments, misrepresentation, or any other decision adverse to the applicant.

(3) "Applicant" means a person who has initially applied or a member who is applying for continuation of FHIAP subsidy payments, but who has not yet been determined or redetermined to be eligible to receive such subsidy or continued subsidy.

(4) "Benchmark" means an identified minimum level of health insurance benefits qualifying for subsidy eligibility. The benchmark is established by the Board in consultation with the Health Insurance Reform Advisory Committee and is submitted to and approved by the federal government. Plans that do not cover services that are available through community resources may be approved for FHIAP subsidy.

(5) "Board" means the Insurance Pool Governing Board established under ORS 735.704.

(6) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance. Carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(7) "Certified carrier" means a carrier that has been certified by the Board to participate in FHIAP. Certified carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(8) "Dependent" for the purposes of FHIAP means:

(a) An applicant's spouse.

(b) All of the applicant's and applicant's spouse's unmarried children, step children, legally adopted children or children placed under the legal guardianship of the applicant or their spouse who are under the age of 23 and reside with the applicant.

(c) An unborn child of any applicant or their dependent as verified by written correspondence from a licensed medical practitioner.

(9) "Family" is defined in ORS 735.720(2).

(10) "Federal poverty level" means the poverty income guidelines as defined by the United States Department of Health and Human Services. These guidelines will be adopted by FHIAP no later than May 1 each year.

(11) "FHIAP" means the Family Health Insurance Assistance Program established by ORS 735.720 to 735.740.

(12) "Health Benefit Plan" is defined in ORS 735.720(3)(a) and (b).

(13) "Health insurance producer" means a person who holds a current, valid license pursuant to ORS 774.089 as an insurance producer, where such producer is authorized to transact health insurance.

(14) "Incarcerated" means a person living in a correctional facility. The following individuals are considered to be living in correctional facilities:

(a) Individuals who are legally confined to a correctional facility such as jail, prison, penitentiary, or juvenile detention center;

(b) Individuals temporarily released from a correctional facility to perform court-imposed community service work;

(c) Individuals on short-term leave, fewer than 30 days, from a correctional facility;

(d) Individuals released from a correctional facility for the sole purpose of obtaining medical care.

(15) "Income" includes, but is not limited to, earned and unearned income received by adults and unearned income received by children. Income includes bartering, or working in exchange for goods and services, discounts on goods and services, working in exchange for rent, and payments made for personal living expenses from business funds. For purposes of determining average monthly income, an applicant may deduct child or spousal support payments made by the applicant for a child or spouse that FHIAP does not consider a dependent. No deduction is allowed for support that is owed but not paid and collected through an offset against the applicant's state income tax refund.

(a) In order for FHIAP to take this deduction in income, the applicant must provide proof of the support payments by sending FHIAP either a printout from the Support Enforcement Division, or by sending copies of cancelled checks showing the payments made to the obligee.

(b) Income also includes educational income. FHIAP will allow a reduction of the educational income received equal to the amount of tuition and fees paid plus \$500 for books and other expenses, or an amount the applicant can show in receipts for the expenses, whichever is more.

(16) "Investments and savings" include, but are not limited to: cash, checking accounts, savings accounts, time certificates, stocks, bonds, non-retirement qualified annuities, other securities easily converted to cash, and the tax-assessed value, as indicated by the county assessor, of any residential or commercial property that is owned by or in which a beneficial inter-

# ADMINISTRATIVE RULES

est is held by the applicant or the applicant's family. "Investments and savings" does not include one property maintained by the applicant or the applicant's family as a primary residence. If the applicant or applicant's family maintain multiple residences or own real property as residential rentals, those properties (other than one single primary residence) are included within the definition of "investments and savings." "Investment and savings" excludes commercial property owned or leased by an applicant or an applicant's family and used by the applicant or the applicant's family exclusively to conduct a business operated by the applicant or the applicant's family. "Investments and savings" also excludes qualified retirement accounts, including but not limited to IRAs and 401(k) plans.

(17) "Liable adult" means a person or persons who applied for or receives a subsidy for themselves or others. Children are not considered liable adults if their parent or guardian applied for or received a subsidy on the child's behalf.

(18) "Medicaid," see OHP.

(19) "Medicare" is a federal health insurance program for those who are 65 or older, disabled, or have permanent kidney failure. May include both Parts A and B, or may only include Part A or Part B.

(20) "Member" means a person enrolled in FHIAP and eligible for or receiving a subsidy from the program.

(21) "Misrepresentation" means making an inaccurate or deliberately false statement of fact, by word, action, or omission of material fact.

(22) "OHP" means the Oregon Health Plan Medicaid program and all programs that include medical assistance provided under 42 U.S.C. section 1396a (section 1902 of the Social Security Act).

(23) "Overpayment" means any subsidy payment made that exceeds the amount a member is eligible for, and has been received by, or on behalf of, that member.

(24) "Overpayment amount" means:

(a) The total amount of subsidy payments the Board has paid to, or on behalf of, an ineligible member; or

(b) The total amount of subsidy payments in excess of the correct subsidy amount paid to, or on behalf of, an eligible member; or

(c) Both (a) and (b).

(25) "Postmark" means the postmark date affixed by the United States Postal Service.

(26) "Public institution" means state-funded residential facilities such as Eastern Psychiatric Center, Oregon State Hospital, or Eastern Oregon Training Center.

(27) "Qualified non-citizen" for the purposes of FHIAP. A person is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1523(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(i) American Indians born in Canada to whom the provision of section 289 of the INA (8 U.S.C. 1359) apply.

(j) Members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(k) A veteran of the U.S. Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty requirements described in 38 U.S.C. 5303A(d).

(l) A member of the U.S. Armed Forces on active duty (other than active duty for training).

(m) The spouse or dependent child of a person described in either (k) or (l) above.

(n) A legal non-citizen approved for FHIAP subsidy prior to November 1, 2004.

(28) "Redetermination" means the periodic review and determination of a member's continued eligibility or subsidy level.

(29) "Reservation list" means a list of potential applicants for FHIAP, entered onto a register maintained by the TPA or state agency as authorized by ORS 735.724.

(30) "Resident" is defined in ORS 735.720(8).

(31) "Self-employment" means income received from a business owned, in whole or in part, by a FHIAP applicant or dependent if the income is reported on an Internal Revenue Service (IRS) Schedule C or 1099. Self-employed income also includes income received for providing adult foster care if the recipient of the care lives in the applicant's home. Self-employment does not include income received from a partnership, S-corporation, C-corporation or adult foster caregivers who do not provide the care in their own home. Self-employment does not include income received from a Limited Liability Company except in the following situations:

(a) If an applicant or their dependent have income from a Limited Liability Company and file an IRS schedule C for said income, that income will be treated as self-employment and subject to business deductions.

(b) If an applicant or their dependent have income from a Limited Liability Company and file an IRS schedule F or J for said income, that income will be treated as Farming, Fishing or Ranching and subject to business deductions.

(32) "Support" means any court-ordered monetary payment for a child or former spouse or domestic partner whom FHIAP does not count in the applicant's family.

(33) "Voluntary payroll deduction" means an amount the employee has authorized the employer to deduct from the employee's income to pay expenses not required by law.

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

Stat. Auth.: ORS 735.724, 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 2-2002(Temp), f. 4-19-02, cert. ef. 5-11-02 thru 10-31-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 4-2002(Temp), f. & cert. ef. 12-6-02 thru 6-4-03; IPGB 1-2003, f. & cert. ef. 6-16-03; Hist.: IPGB 1-2004, f. & cert. ef. 11-1-04; IPGB 2-2005(Temp), f. & cert. ef. 7-7-05 thru 1-1-06

## 442-004-0040

### Selection of Certified Carriers in the Individual Health Benefit Plan Market

Selection criteria used to determine which carriers may be certified includes but is not limited to:

(1) Agree to a three-year commitment to be a FHIAP-certified carrier.

(2) Agree to electronic transferring of invoices and payments.

(3) Accept the Certificate of Eligibility in lieu of a first month's payment.

(4) Be an Oregon licensed health insurance company or health care service contractor holding a valid certificate of authority from the Department of Consumer and Business Services authorizing the transaction of health insurance.

(5) Be in the Oregon small employer-sponsored health benefit plan market (2-50 employees) and Oregon individual health benefit plan market.

(6) Have been in the individual or portability market for at least the last three consecutive years.

(7) Agree to accept FHIAP payment grace periods.

(8) The carrier shall remain responsible for notifying its FHIAP membership of premium rate increases.

(9) Offer one or more health benefit plans that include (as part of the plan or as an optional rider):

(a) Prescription drugs.

(b) Preventive services.

(c) Maternity benefits.

(d) Mental Health/Chemical Dependency benefits.

(e) Hospice and palliative care.

(10) Agree to give the Insurance Pool Governing Board a written 180-day notice of intent to withdraw from being a certified carrier.

(11) Agree that the Insurance Pool Governing Board may cancel partnership with cause by giving 180-day written notice.



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(12) If the Board determines at any time that an insufficient number of individual health benefit plan options are available, it may request additional Individual Health Benefit Plan carriers to be certified.

(13) If a carrier elects to discontinue participation in the program, members served by that carrier will have to reapply for health benefit plan coverage with another FHIAP-certified carrier and maintain continuous coverage in order to remain eligible for the subsidy. For the purposes of this section, continuous coverage may include a 120-calendar day break in coverage.

(14) The carrier discontinuing participation must notify each insured FHIAP member 90 calendar days before their coverage will be discontinued and inform each insured to contact FHIAP for assistance in obtaining new coverage.

(15) May give preference to carriers with statewide coverage.

Stat. Auth.: ORS 735.730 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 2-2005(Temp), f. & cert. ef. 7-7-05 thru 1-1-06

## 442-004-0050

### Eligibility

(1) To be eligible to receive a subsidy for purchasing a health benefit plan in the individual market an applicant:

(a) Must be a resident of Oregon.

(b) Must be a United States citizen or a qualified non-citizen who meets the alien status requirement.

(c) Must have been without any health benefit plan coverage for the six months immediately prior to either getting on a FHIAP reservation list or at the time of application processing for subsidy in the individual health benefit plan market. This requirement does not apply if any applicant:

(A) Has been enrolled in OHP and been without a health benefit plan since leaving OHP, regardless of any health benefit plan coverage prior to entering OHP; or

(B) Has been enrolled in OHP and been subsidized in a health benefit plan during enrollment in OHP, if application for the FHIAP reservation list occurs within 60 days of leaving OHP; or

(C) Is currently enrolled in OHP.

(D) Meets the criteria as stipulated in OAR 442-004-0070.

(E) Has coverage through the Kaiser Child Health Program or any benefit plan authorized by ORS 735.700-735.714.

(d) Must have average monthly income, from all sources, of up to 185 percent of the federal poverty level in effect at the time of determination.

(A) Average income from all sources, except income received from farming, fishing, ranching, or self-employment, will be determined using income received in the three-calendar months prior to the month in which the application was signed.

(B) Average income received from farming, fishing, and ranching will be determined using income received from all farming, fishing, and ranching sources during the 12 months prior to the month the application was signed. FHIAP will determine whether income received is considered farming, fishing or ranching income and is subject to this 12-month income determination period. Average income will be determined by either method below (i or ii) as specified by the applicant on the Self-Employment Worksheet. Whichever method the applicant chooses to use will be the method used throughout that year's eligibility determination, including appeal and hearing processes.

(C) FHIAP will determine if the applicant or their spouse meets the definition of self-employment. Upon meeting the definition of self-employment, the average gross monthly income received from self-employment and prior to FHIAP deductions will be determined using gross income received from the self-employed business during the six months prior to the month in which the application was signed. If the average gross monthly self-employment income during the six months prior to the month the application was signed exceeds \$10,000.00, the applicant will be ineligible for FHIAP. Average adjusted income will be determined by either method below (i or ii) as specified by the applicant on the Self-Employment Worksheet. Whichever method the applicant chooses to use will be the method used throughout that year's eligibility determination, including appeal and hearing processes.

(i) Income received from farming, fishing, ranching and self-employment will be reduced by 50 percent for business expenses; or

(ii) Income received from farming, fishing, ranching and self-employment will be reduced by the actual allowable expenses incurred during the six or twelve months prior to the date the application was signed.

(I) The following are considered allowable expenses:

(I-a) Labor (wages paid to an employee or work contracted out) except when paid to the applicant, anyone in the applicant's family, or a business partner.

(I-b) Raw materials, equipment, machinery or other durable goods used to make a product or provide a service, excluding personal vehicles and real property. FHIAP will determine whether a vehicle is considered a personal vehicle based upon information submitted by the applicant and information obtained from the Department of Motor Vehicles.

(I-c) Interest paid to purchase income-producing property, such as equipment or capital assets.

(I-d) Insurance premiums, taxes, assessments, and utilities paid on income-producing property.

(I-e) Service, repair, and rental of business equipment (including motor vehicles) and property that is owned, leased or rented, excluding personal vehicles. FHIAP will determine whether a vehicle is considered a personal vehicle based upon information submitted by the applicant and information obtained from the Department of Motor Vehicles.

(I-f) Advertisements and business supplies.

(I-g) Licenses, permits, legal, or professional fees.

(I-h) Transportation costs at 20 cents per mile, if the cost is part of the business expense. Commuting expenses to and from the worksite are not considered part of the business expense. If applicant is able to prove actual expenses for fuel and maintenance on business vehicles, those amounts can be deducted in lieu of the mileage calculation. In no instance will both deductions be allowed.

(I-i) Charges for telephone services that can be verified as a necessary expense for self-employment.

(I-j) Meals and snacks provided by family day care providers. The actual cost of the meals will be used if the provider can document the cost. If they cannot document the actual cost, the following figures will be used: Breakfast \$ .99; Lunch \$1.83; Dinner \$1.83; and Snacks \$ .54.

(I-k) Costs related to traveling to another area only when there is a reasonable possibility of deriving income from the trip, except for the cost of meals.

(I-l) Business related bank and credit card fees.

(I-m) Bad debt.

(II) The following are not allowed as costs of producing self-employment income:

(II-a) Meals for the applicant or their family.

(II-b) Payments on the principal of the purchase price of income-producing real estate.

(II-c) Federal, state, and local income taxes, draws, or salaries paid to any family member, money set aside for personal retirement, and other work-related personal expenses (such as transportation, personal business, and entertainment expenses).

(II-d) Depreciation.

(II-e) Costs related to traveling to another area when there is no reasonable possibility of deriving income from the trip.

(II-f) Interest paid on credit card accounts.

(II-g) Personal telephone charges.

(II-h) The costs of real property used as both a home and a business.

(II-i) Losses incurred by another business.

(D) Income is available immediately upon receipt, or when the applicant has a legal interest in the income and the legal ability to make the income available, except in the following situations when it is considered available as indicated:

(i) For earned and unearned income:

(I) Income available prior to any deductions such as garnishments, taxes, payroll deductions, or voluntary payroll deductions will be considered as available; however, support payments as defined in OAR 442-004-0010(32) may be deducted from gross income if the applicant is able to prove the payments were made.

(II) Income usually paid monthly or on some other regular schedule, but paid early or late is treated as available on the regular payday.

(ii) Earned income is available as follows:

(I) Income withheld or diverted at the request of an employee is considered available in the month the wages would have been paid;

(II) An advance or draw that will be subtracted from later wages is available when received.

(iii) Payments that should legally be made directly to an applicant, but are paid to a third party on behalf of an applicant, are considered available the date that is on the check or stub.

(E) Income is not available if:

(i) The wages are withheld by an employer, with the exception of garnishment, even if in violation of the law;

## ADMINISTRATIVE RULES

(ii) The income is paid jointly to the applicant and other individuals and the other individuals do not pay the applicant his/her share.

(e) Must have investments and savings less than \$10,000 at the time of eligibility determination.

(f) Must enroll in a plan that meets the benchmark as established by the Board and is offered by a FHIAP-certified carrier.

(2) To be eligible to receive a subsidy for employer-sponsored health benefit plans an applicant:

(a) Must be a resident of Oregon.

(b) Must be a United States citizen or a qualified non-citizen who meets the alien status requirement.

(c) Must have been without any health benefit plan coverage for the six months immediately prior to either getting on a FHIAP reservation list or at the time of application processing for subsidy eligibility. This requirement does not apply if any applicant:

(A) Has been enrolled in OHP and been without a health benefit plan since leaving OHP, regardless of any health benefit plan coverage prior to entering OHP; or

(B) Has been enrolled in OHP and been subsidized in a health benefit plan during enrollment in OHP, if application for the FHIAP reservation list occurs within 60 days of leaving OHP; or

(C) Is currently enrolled in the OHP.

(D) Meets the criteria as stipulated in OAR 442-004-0070.

(E) Has coverage through the Kaiser Child Health Program or any benefit plan authorized by ORS 735.700-735.714.

(F) Applies for a FHIAP subsidy within 90 days after enrolling in employer sponsored insurance, provided the applicant had been without any insurance coverage for six consecutive months immediately before becoming insured under the employer sponsored insurance.

(d) Must have average monthly income, from all sources, of up to 185 percent of the federal poverty level in effect at the time of determination.

(A) Average income from all sources, except income received from farming, fishing, ranching, or self-employment, will be determined using income received in the three calendar months prior to the month in which the application was signed.

(B) Average income received from farming, fishing, and ranching will be determined using income received from all farming, fishing, and ranching sources during the 12 months prior to the month the application was signed. FHIAP will determine whether income received is considered farming, fishing or ranching income and is subject to this 12 month income determination period. Average income will be determined by either method below (i or ii) as specified by the applicant on the Self-Employment Worksheet. Whichever method the applicant chooses to use will be the method used throughout that year's eligibility determination, including appeal and hearing processes.

(C) FHIAP will determine if the applicant or their spouse meets the definition of self-employment. Upon meeting the definition of self-employment, the average gross monthly income received from self-employment and prior to FHIAP deductions will be determined using gross income received from the self-employed business during the six months prior to the month in which the application was signed. If the average gross monthly self-employment income during the six months prior to the month the application was signed exceeds \$10,000.00, the applicant will be ineligible for FHIAP. Average adjusted income will be determined by either method below (i or ii) as specified by the applicant on the Self-Employment Worksheet. Whichever method the applicant chooses to use will be the method used throughout that year's eligibility determination, including appeal and hearing processes.

(i) Income received from farming, fishing, ranching and self-employment will be reduced by 50 percent for business expenses; or

(ii) Income received from farming, fishing, ranching and self-employment will be reduced by the actual allowable expenses incurred during the six or twelve months prior to the date the application was signed.

(I) The following are considered allowable expenses:

(I-a) Labor (wages paid to an employee or work contracted out) except when paid to the applicant, anyone in the applicant's family, or a business partner(s).

(I-b) Raw materials, equipment, machinery or other durable goods used to make a product or provide a service, excluding personal vehicles and real property. FHIAP will determine whether a vehicle is considered a personal vehicle based upon information submitted by the applicant and information obtained from the Department of Motor Vehicles.

(I-c) Interest paid to purchase income-producing property, such as equipment or capital assets.

(I-d) Insurance premiums, taxes, assessments, and utilities paid on income-producing property.

(I-e) Service, repair, and rental of business equipment (including motor vehicles) and property that is owned, leased or rented, excluding personal vehicles. FHIAP will determine whether a vehicle is considered a personal vehicle based upon information submitted by the applicant and information obtained from the Department of Motor Vehicles.

(I-f) Advertisements and business supplies.

(I-g) Licenses, permits, legal, or professional fees.

(I-h) Transportation costs at 20 cents per mile, if the cost is part of the business expense. Commuting expenses to and from the worksite are not considered part of the business expense. If applicant is able to prove actual expenses for fuel and maintenance on business vehicles, those amounts can be deducted in lieu of the mileage calculation. In no instance will both deductions be allowed.

(I-i) Charges for telephone services that can be verified as a necessary expense for self-employment.

(I-j) Meals and snacks provided by family day care providers. The actual cost of the meals will be used if the provider can document the cost. If they cannot document the actual cost, the following figures will be used: Breakfast \$ .99; Lunch \$1.83; Dinner \$1.83; and Snacks \$ .54.

(I-k) Costs related to traveling to another area only when there is a reasonable possibility of deriving income from the trip, except for the cost of meals.

(I-l) Business related bank and credit card fees.

(I-m) Bad debt.

(II) The following are not allowed as costs of producing self-employment income:

(II-a) Meals for the applicant or or their family.

(II-b) Payments on the principal of the purchase price of income-producing real estate.

(II-c) Federal, state, and local income taxes, draws, or salaries paid to any family member, money set aside for personal retirement, and other work-related personal expenses (such as transportation, personal business, and entertainment expenses).

(II-d) Depreciation.

(II-e) Costs related to traveling to another area when there is no reasonable possibility of deriving income from the trip.

(II-f) Interest paid on credit card accounts.

(II-g) Personal telephone charges.

(II-h) The costs of real property used as both a home and a business.

(II-i) Losses incurred by another business.

(D) Income is available immediately upon receipt, or when the applicant has a legal interest in the income and the legal ability to make the income available, except in the following situations when it is considered available as indicated:

(i) For earned and unearned income:

(I) Income available prior to any deductions such as garnishments, taxes, payroll deductions, or voluntary payroll deductions will be considered as available; however, support payments as defined in OAR 442-004-0010(32) may be deducted from gross income if the applicant is able to prove the payments were made.

(II) Income usually paid monthly or on some other regular schedule, but paid early or late is treated as available on the regular payday.

(ii) Earned income is available as follows:

(I) Income withheld or diverted at the request of an employee is considered available in the month the wages would have been paid;

(II) An advance or draw that will be subtracted from later wages is available when received.

(iii) Payments that should legally be made directly to an applicant, but are paid to a third party on behalf of an applicant, are considered available the date that is on the check or stub.

(E) Income is not available if:

(i) The wages are withheld by an employer, with the exception of garnishment, even if in violation of the law;

(ii) The income is paid jointly to the applicant and other individuals and the other individuals do not pay the applicant his/her share.

(e) Must be able to enroll and have premium subsidized in an employer-sponsored health benefit plan that meets the benchmark standard established by the Board. Plans that do not cover services that are available through community resources may be approved for FHIAP subsidy.

(A) If the applicant or their family are eligible to enroll within 120 days of FHIAP approval, FHIAP will assist with the enrollment process into the employer-sponsored plan.

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(B) If the applicant or their family are eligible to enroll after 120 days, FHIAP will approve the family members for an individual subsidy until they are eligible to enroll in the employer-sponsored plan. FHIAP will mail these applicants and their families a certificate of eligibility allowing them to enroll according to the eligibility criteria in OAR 442-004-0050(1), (3) and (5) and enrollment criteria in OAR 442-004-0090.

(i) If the employer-sponsored coverage becomes available during the period between 121 days and the end of subsidy eligibility to those family members who have enrolled in the individual market, those members will be required to enroll in the employer-sponsored coverage and will cease to be eligible for a FHIAP subsidy in the individual market.

(ii) If the employer provides no coverage for all the family members, see OAR 442-004-0050(2)(f).

(f) Applicants on the employer-sponsored reservation list will be approved for a FHIAP subsidy only if an employer-sponsored health benefit plan is available to them or someone in their family. If an applicant is on the employer-sponsored reservation list and does not have an employer-sponsored health benefit plan available to them or to anyone in their family within 12 months or the health benefit plan does not meet the benchmark, the application will be denied and they will be given the option of being placed on the individual reservation list or will be automatically placed on the individual reservation list. They will be placed on the individual reservation list at the same date they were originally placed onto the group reservation list.

(g) Must have investments and savings less than \$10,000 at the time of eligibility determination.

(3) Additional eligibility requirements include the following:

(a) To be included in the family size for FHIAP eligibility determination, must meet one of the definitions of family in ORS 735.720(2) on the last day of the month prior to the month in which the application is signed.

(b) Adult applicants are eligible to receive a subsidy only if all children eligible for FHIAP in the family are covered under some form of a health benefit plan. For the purposes of this section, OHP and the State Children's Health Insurance Program are health benefit plans.

(c) A dependent may not be counted in two separate households for the purposes of FHIAP and any other assistance program, such as the Oregon Health Plan. If a family member is found to have been counted in more than one household for the purposes of obtaining benefits, that person will not be counted in the family for FHIAP.

(4) Termination occurs and members are ineligible to enroll or re-enroll in FHIAP:

(a) For six months from the date of termination when these members lose health benefit plan coverage for an eligible child or eligible children in the family and the coverage is not replaced within 120 calendar days from the time FHIAP notifies them that they must replace the eligible child's coverage.

(b) For six months from the date of termination when a FHIAP member is terminated from FHIAP for being enrolled simultaneously in OHP and FHIAP.

(c) Permanently when a FHIAP civil penalty is imposed on an applicant.

(5) Ineligibility results if:

(a) Any FHIAP applicant is eligible for or receiving Medicare. Subsidy may remain in force for the remainder of the member's 12-month eligibility period;

(b) Any FHIAP applicant or member is incarcerated beyond 30 continuous calendar days;

(c) Any FHIAP applicant or member is a resident of a public institution or a ward of the state; or

(d) Any FHIAP member is enrolled in OHP and FHIAP simultaneously and fails to timely terminate from one program after being notified by FHIAP that they must do so.

(e) Any FHIAP member receives other health insurance coverage, not including the Oregon Health Plan or sporadic coverage, in addition to the plan FHIAP subsidizes.

(f) Any member or applicant is found to have committed material misrepresentation on their application for FHIAP or in their supporting documentation.

(g) Any information submitted is inconsistent and does not allow for eligibility determination.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 2-2002(Temp), f. 4-19-02, cert. ef. 5-11-02 thru 10-31-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04; IPGB 2-2005(Temp), f. & cert. ef. 7-7-05 thru 1-1-06

## 442-004-0070

### Reservation Lists

(1) To manage enrollment and ensure that funds are available to cover subsidy payments for those enrolled, two reservation lists will be established for FHIAP. The Board will establish procedures to manage the reservation lists with the goal of more equally distributing funds between the employer-sponsored health benefit market and the individual health benefit market. One list will be for prospective applicants who have or will have access to employer-sponsored health benefit coverage. One list will be for prospective applicants who do not have access to employer-sponsored health benefit coverage.

(2) The TPA or state agency will maintain both reservation lists.

(3) Prospective applicants may request a place on the appropriate reservation list or be assigned a reservation number before applications are processed and eligibility is determined.

(4) Prospective applicants may be added to the appropriate reservation list or assigned a reservation number in order of the date the TPA or state agency receives a completed reservation request either in writing or over the telephone.

(5) Each request will be assigned a reservation number, which will also function as confirmation of placement on the appropriate reservation list.

(6) Prospective applicants on the reservation list will be notified of their right to apply for FHIAP as program funds are available.

(7) When enrollment in FHIAP reaches the maximum that funding will allow, additional enrollment may occur as current members terminate or if additional program funding becomes available.

(8) A prospective applicant has 75 days from the date the Board mails the application form, or notifies the prospective applicant that they may apply for a FHIAP subsidy, to return a completed application form to the Board. If the Board does not receive a completed application form within 60 days from the date it mails the application form, or notifies the applicant, the Board will mail a "15-day notice" to the prospective applicant advising that only 15 days remain in which to complete and submit the application form. If a prospective applicant does not return an application form within 75 days from the original date of mailing or notification, the Board will remove the prospective applicant's name from the reservation list.

(9) A prospective applicant may acquire a health benefit plan, for themselves or their dependents, while on the reservation list or at the same time they submit their reservation request, if the family or members of the family applying for subsidy met the six-month period of uninsurance requirement.

(10) New family members of current FHIAP members eligible to be added to existing health benefit plan coverage are not placed on the reservation list;

(11) Members who have terminated from FHIAP cannot re-enroll in the program without first reapplying for a subsidy, unless they have a family member who is still enrolled in FHIAP.

Stat. Auth.: ORS 735.734, 735.722(2) & 735.728(2)

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04; IPGB 2-2005(Temp), f. & cert. ef. 7-7-05 thru 1-1-06

## 442-004-0080

### Application Process

(1) An application form developed by the Board, and any documentation required on the form, will be used to determine eligibility and subsidy level.

(2) The Board will establish procedures for the application process with the goal of more equally distributing funds between the employer-sponsored health benefit market and the individual health benefit market. This may require the board to release applications from one reservation list ahead of the other reservation list.

(3) The application process as stipulated in this application section, OAR 442-004-0080, will be the only time when applicants can submit information proving their program eligibility.

(4) As funds are available, prospective applicants on a reservation list are notified in writing of their eligibility to apply for FHIAP in accordance with OAR 442-004-0070. An application form is included with the notice.

(5) The applications will be processed according to the timelines stipulated in OAR 442-004-0070:

(a) If the completed application is not postmarked within the timelines stipulated in OAR 442-004-0070, the prospective applicant may get back on the appropriate FHIAP reservation list in order to receive another application as space permits.



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(b) FHIAP has 30 calendar days to take action on the application for subsidy. The action may be approval, denial, or a request for further information from the applicant.

(A) When further information is requested, the applicant has 45 calendar days from the date on the request to provide the additional information. If the information requested by FHIAP is not received within 30 calendar days from the date on the request, the Board will mail a "15-day notice" to the applicant advising that only 15 days remain in which to provide the additional information. If an applicant does not provide all requested information within 45 days of the initial request, the application is denied.

(B) Once an applicant has been denied because the applicant failed to respond to the request for further information, the applicant must make a new reservation request to FHIAP to be sent an application in the future. Their name may be placed on the reservation list in the manner prescribed in OAR 442-004-0070.

(c) FHIAP may screen applications for FHIAP for potential eligibility for OHP. If FHIAP discovers that such potential eligibility exists, FHIAP will advise the applicant in writing of this possibility.

(6) Documents that verify required information provided on the application must be provided with the application if FHIAP is not able to verify the information electronically or by other means. Required documentation includes but is not limited to:

(a) A copy of a current Oregon identification or other proof of residency for all adult applicants;

(b) Documents verifying all adult applicant's and spouse's earned and unearned income and children's unearned income for the three months prior to the month in which the application is signed. Documentation may include, but is not limited to, pay stubs, award letters, support printouts and unemployment benefit stubs or printouts;

(c) Documents verifying income from self-employment for the six months prior to the signature date on the application, if applicable. Documentation may include, but is not limited to, business ledgers, profit and loss statements and bank statements;

(d) Documents verifying income from farming, fishing and ranching for the 12 months prior to the signature date on the application, if applicable. Documentation may include, but is not limited to, business ledgers, profit and loss statements and bank statements;

(e) The most recently filed federal tax return and all schedules for all applicants who have self-employment income or farming, fishing or ranching income.

(f) A copy of any employer sponsored insurance handbook, summary, or contract that is available to any applicant.

(g) A completed Group Insurance Information (GII) form, if the applicant has employer sponsored insurance available to them.

(7) Additional verification must be provided when FHIAP requests it.

(a) FHIAP may verify any factors affecting eligibility, benefit levels or any information reported. Such information includes, but is not limited to:

(A) Information reported is inconsistent;

(B) Information provided on the application is inconsistent;

(C) Other information received by FHIAP is inconsistent with information on the FHIAP application;

(D) Information reported on previous applications is inconsistent with a current FHIAP application.

(b) FHIAP may decide at any time that additional eligibility factors must be verified.

(c) FHIAP may deny an application or end ongoing subsidy when acceptable verification is not provided.

Stat. Auth.: ORS 735.734, 735.722(2) & 735.728(2)

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 2-2002(Temp), f. 4-19-02, cert. ef. 5-11-02 thru 10-31-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04; IPGB 2-2005(Temp), f. & cert. ef. 7-7-05 thru 1-1-06

## 442-004-0117

### Audits

(1) The Board may conduct audits on a selective or random basis to determine whether it has correctly followed statutes, rules, policies and procedures such that eligibility is correctly determined.

(2) As a result of an audit the Board may determine that a member or former member is or was ineligible for a FHIAP subsidy or is or was ineligible for a FHIAP subsidy at the level determined. The member may be terminated retroactively, or the subsidy level may be corrected retroactively.

(3) An audit determination may result in a determination that an overpayment or underpayment was made to or on behalf of a member or former member.

(4) If the Board requests additional information or documentation to verify information during the audit process, the member or former member must provide such information or documentation. This additional information may include tax returns, bank statements, income verification, court records and anything that may clarify an applicant's eligibility for the program.

(a) The Board may verify any facts affecting eligibility, benefit levels, or any previously reported information.

(b) The Board may deny an application or end any subsidy payment if requested verification is not provided.

(5) The Board may require a member to provide anew the same information as required by OAR 442-004-0050 and 442-004-0080.

(6) The Board will request additional information or documentation by a request for information letter. The member has 30 days from the date of the request to submit the information or documentation. If the information is not received within 30 days, the member will be terminated as provided in OAR 442-004-0120.

(7) If a member fails to cooperate with the Board in conducting its audit, the member will be terminated as provided in OAR 442-004-0120.

(8) If, as a result of an audit, the Board makes a determination regarding eligibility, level of subsidy, or any other matter that differs its original determination, the Board will notify the member in writing, of the reason for the change or denial of subsidy payments, the effective date of the Board's action, and the member's appeal rights.

Stat. Auth.: ORS 735.734, 735.720 & 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 1-2004, f. & cert. ef. 11-1-04; IPGB 2-2005(Temp), f. & cert. ef. 7-7-05 thru 1-1-06

## 442-004-0120

### Member Termination

Approval for a FHIAP subsidy is valid for 12 months unless a completed redetermination application is approved for continued subsidy. The member's enrollment in FHIAP may be terminated when any of the following occurs:

(1) Payment of the member's share of health benefit plan premiums is not postmarked by the date stipulated in correspondence from FHIAP;

(2) The member is no longer a resident of Oregon;

(3) The member terminates or is terminated from the member's health benefit plan and fails to notify FHIAP;

(4) The health benefit plan that covers the eligible child of any member terminates or is terminated, and the member does not replace the eligible child's health benefit plan within 120 calendar days from the date the Board notifies the member to replace the child's coverage.

(5) The member is determined to be ineligible at redetermination.

(6) The member enrolls in OHP and fails to terminate as described in OAR 442-004-0050(5)(d).

(7) The member fails to report a change in circumstances as described in OAR 442-004-0115.

(8) In the employer-sponsored health benefit plan market, the member fails to provide monthly verification of coverage, premiums, and employer contribution within 60 days from the date FHIAP requests such documentation.

(9) The member fails to pay an overpayment amount as per OAR 442-004-0130(8).

(10) The member fails to return their redetermination application within 45 days from the date it was mailed to them.

(11) The member failed to submit required or requested information or submitted inadequate or unclear information such that the Board cannot make an eligibility determination or such that the Board makes an incorrect eligibility or level of subsidy determination.

(12) The Board erroneously granted eligibility to a member when eligibility should have been denied and the Board discovers the error during an audit of the member's file.

(13) The member commits misrepresentation with respect to the FHIAP program.

(14) A member enrolled in the individual market fails to enroll in the employer sponsored health benefit plan when the plan meets the benchmark and there is an opportunity for them to enroll as described in OAR 442-004-0050(2)(e).

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-

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02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04; IPGB 2-2005(Temp), f. & cert. ef. 7-7-05 thru 1-1-06

## 442-004-0170

### Rule Authorizing Agency Representative

(1) Subject to the approval of the Attorney General, an officer or employee of this agency is authorized to appear on behalf of the agency in the following type of hearing conducted by this agency: A hearing that may result in the change or termination of program benefits as well as in some cases imposing civil penalties.

(2) The agency representative may not make legal argument on behalf of the agency.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments or arguments on:

(A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; and

(D) The admissibility of evidence or the correctness of procedures being followed.

(3) When an agency officer or employee represents the agency, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

(4) The presiding officer may limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to insure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal argument as defined in subsection (2)(a).

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 2-2005(Temp), f. & cert. ef. 7-7-05 thru 1-1-06

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## Land Conservation and Development Department Chapter 660

**Adm. Order No.:** LCDD 4-2005

**Filed with Sec. of State:** 6-28-2005

**Certified to be Effective:** 6-28-05

**Notice Publication Date:** 11-1-04, 12-1-04

**Rules Amended:** 660-004-0010, 660-015-0000

**Subject:** The amendments to Statewide Planning Goal 14 (OAR 660-015-0000(14)) modify current requirements for adopting or amending an Urban Growth Boundary (UGB), including factors regarding land need and boundary location. The amendments also eliminate requirements for an exception in the amendment of a UGB. Amendments also modify related statewide goal definitions. The amendments to OAR 660-004-0010 eliminate the requirement for exceptions in amending a UGB, in conformance with the amended goal.

**Rules Coordinator:** Shelia Preston—(503) 373-0050, ext. 222

### 660-004-0010

#### Application of the Goal 2 Exception Process to Certain Goals

(1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning." The exceptions process is generally applicable to all or part of those statewide goals which prescribe or restrict certain uses of resource land or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(a) Goal 3 "Agricultural Lands"; however, an exception to Goal 3 "Agricultural Lands" is not required for any of the farm or nonfarm uses permitted in an exclusive farm use (EFU) zone under ORS Chapter 215 and OAR chapter 660 division 033, "Agricultural Lands";

(b) Goal 4 "Forest Lands"; however, an exception to Goal 4 "Forest lands" is not required for any of the forest or nonforest uses permitted in a forest or mixed farm/forest zone under OAR chapter 660, division 006, "Forest Lands";

(c) Goal 14 "Urbanization" except as provided for in OAR chapter 660, division 014 and the applicable paragraph (l)(c)(A), (B) or (C) of this rule:

(A) An exception is not required for the establishment of an urban growth boundary around or including portions of an incorporated city;

(B) When a local government changes an established urban growth boundary applying Goal 14 as it existed prior to the amendments adopted April 28, 2005, it shall follow the procedures and requirements set forth in Goal 2 "Land Use Planning," Part II, Exceptions. An established urban growth boundary is one which has been acknowledged by the Commission under ORS 197.251, 197.625 or 197.626. Revised findings and reasons in support of an amendment to an established urban growth boundary shall demonstrate compliance with the seven factors of Goal 14 and demonstrate that the following standards are met:

(i) Reasons justify why the state policy embodied in the applicable goals should not apply (This factor can be satisfied by compliance with the seven factors of Goal 14);

(ii) Areas which do not require a new exception cannot reasonably accommodate the use;

(iii) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(iv) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

(C) When a local government changes an established urban growth boundary applying Goal 14 as amended April 28, 2005, a goal exception is not required unless the local government seeks an exception to any of the requirements of Goal 14 or other applicable goals;

(d) Goal 11 "Public Facilities and Services";

(e) Goal 16 "Estuarine Resources";

(f) Goal 17 "Coastal Shorelands"; and

(g) Goal 18 "Beaches and Dunes."

(2) The exceptions process is generally not applicable to those statewide goals which establish planning procedures and standards that do not prescribe or restrict certain uses of resource land or limit the provision of certain public facilities and services, because these goals contain general planning guidance or their own procedures for resolving conflicts between competing uses. However, exceptions to these goals, although not required, are possible and exceptions taken to these goals will be reviewed when submitted by a local jurisdiction. These statewide goals are:

(a) Goal 5 "Natural Resources";

(b) Goal 6 "Air, Water, and Land Resources Quality";

(c) Goal 7 "Natural Disasters and Hazards";

(d) Goal 8 "Recreational Needs";

(e) Goal 9 "Economy of the State";

(f) Goal 10 "Housing" except as provided for in OAR 660-008-0035, "Substantive Standards for Taking a Goal 2, Part II, Exception pursuant to ORS 197.303(3);

(g) Goal 12 "Transportation" except as provided for by OAR 660-012-0070, "Exceptions for Transportation Improvements on Rural Land";

(h) Goal 13 "Energy Conservation";

(i) Goal 15 "Willamette Greenway" except as provided for in OAR 660-004-0022(6); and

(j) Goal 19 "Ocean Resources."

(3) An exception to one goal or goal requirement does not assure compliance with any other applicable goals or goal requirements for the proposed uses at the exception site. Therefore, an exception to exclude certain lands from the requirements of one or more statewide goals or goal requirements does not exempt a local government from the requirements of any other goal(s) for which an exception was not taken.

Stat. Auth.: ORS 197

Stats. Implemented: ORS 197.732

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f. & ef. 2-10-84; LCDC 3-1984, f. & ef. 3-21-84; LCDC 2-1987, f. & ef. 11-10-87; LCDC 3-1988(Temp), f. & cert. ef. 8-5-88; LCDC 6-1988, f. & cert. ef. 9-29-88; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2005, f. & cert. ef. 6-28-05

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660-015-0000

## Statewide Planning Goals and Guidelines #1 through #14

- (1) #1 — Citizen Involvement;
- (2) #2 — Land Use Planning;
- (3) #3 — Agricultural Lands;
- (4) #4 — Forest Lands;
- (5) #5 — Natural Resources, Scenic and Historic Areas, and Open Spaces;

- (6) #6 — Air, Water, and Land Resources Quality;
- (7) #7 — Areas Subject to Natural Hazards;
- (8) #8 — Recreational Needs;
- (9) #9 — Economy of the State;
- (10) #10 — Housing;
- (11) #11 — Public Facilities and Services;
- (12) #12 — Transportation;
- (13) #13 — Energy Conservation; and
- (14) #14 — Urbanization.

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

Stat. Auth.: ORS 183, 197 & 215

Stats. Implemented: ORS 197.010, 197.013, 197.015, 197.040, 197.045, 197.225, 197.230, 197.235, 197.240 & 197.245

Hist.: LCDC 1, f. 12-31-74, ef. 1-25-75; Renumbered from 660-010-0060; LCDC 6-1980, f. & ef. 9-15-80; LCDC 10-1983, f. & ef. 12-30-83; LCDC 5-1984, f. & ef. 10-19-84; LCDC 2-1988, f. & cert. ef. 3-31-88; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 5-1992, f. 8-21-92, cert. ef. 8-7-93; LCDC 2-1994, f. & cert. ef. 3-1-94; LCDC 4-1994, f. & cert. ef. 3-18-94; LCDC 8-1994, f. & cert. ef. 12-5-94; LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96; LCDD 4-1998, f. & cert. ef. 7-28-98; LCDD 8-2000, f. 10-3-00, cert. ef. 10-4-00; LCDD 6-2001, f. 11-2-01, cert. ef. 6-1-02; LCDD 1-2005, f. 2-11-05, cert. ef. 2-14-05; LCDD 4-2005, f. & cert. ef. 6-28-05

## Oregon Public Employees Retirement System Chapter 459

**Adm. Order No.:** PERS 11-2005

**Filed with Sec. of State:** 6-16-2005

**Certified to be Effective:** 6-16-05

**Notice Publication Date:** 3-1-05

**Rules Amended:** 459-070-0001

**Rules Repealed:** 459-070-0001(T)

**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 are to be added.

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

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

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



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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).

(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; PERS 11-2005, f. & cert. ef. 6-16-05

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**Adm. Order No.:** PERS 12-2005

**Filed with Sec. of State:** 7-5-2005

**Certified to be Effective:** 7-5-05

**Notice Publication Date:** 5-1-05

**Rules Adopted:** 459-005-0225

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

**Rules Coordinator:** David K. Martin—(503) 603-7713

## 459-005-0225

### Requirement to Make Payments by Electronic Funds Transfer

(1) As used in this rule, the following words and phrases have the following meanings:

(a) "Public employer" has the same meaning given the term in ORS 238.005(17) and includes all public school districts and educational service districts.

(b) "Electronic funds transfer" has the same meaning given the term in ORS 293.525.

(c) "ACH credit" means the electronic funds transfer from the public employer's account, initiated by the public employer and cleared through the Automated Clearing House (ACH) network for deposit to PERS.

(d) "ACH debit" means the electronic funds transfer from the public employer's account, initiated by PERS and cleared through the ACH network to debit the public employer's account and credit the PERS account.

(2) Public employers are required to make all payments to PERS by means of electronic funds transfer (EFT).

(3) On a form provided by PERS, public employers shall authorize EFT payments to PERS, and submit the form to PERS by December 1, 2005.

(a) The public employer shall provide PERS with all information necessary to allow for EFT payments, including the method of EFT payment (ACH debit or ACH credit).

(b) A public employer must complete a new EFT authorization form to change the method of transfer or to update the employer's account information.

(4) ACH Debits from a public employer's account will be processed on the third business day after the statement date and be effective on the fifth business day after the statement date.

(5) Effective January 1, 2006, a penalty shall be assessed equal to one percent of payments made by means other than EFT. This penalty is in addition to any penalties incurred under ORS 238.710 and OAR 459-020-0025.

(6) The PERS Executive Director will have the discretion to waive the penalty described in section (5) of this rule. The employer must submit any such requests in writing.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 293.525

Hist.: PERS 12-2005, f. & cert. ef. 7-5-05

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**Adm. Order No.:** PERS 13-2005

**Filed with Sec. of State:** 7-5-2005

**Certified to be Effective:** 7-5-05

**Notice Publication Date:** 5-1-05

**Rules Amended:** 459-070-0100, 459-070-0110

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

ORS 293.525 provides parameters for state agencies to require that payments be sent via electronic funds transfer (EFT). These rule modifications conform existing rules to the requirements of that new rule.

Additionally, statutory language incorporated from ORS Chapter 238 into the OPSRP programs imposes harsh penalties on employers that fail to remit reports or contributions in a timely manner. These rules were initially amended to streamline the Executive Director's process to waive penalties. With administrative complications still being worked out, these rule modifications extend the duration of that streamlined process.

**Rules Coordinator:** David K. Martin—(503) 603-7713

## 459-070-0100

### Employer Reporting

(1) Definition. "Pay period" means the span of time covered by an employer's report to PERS.

(2) Unless otherwise agreed upon between the PERS Executive Director and the employer, the employer shall transmit to PERS an itemized report of all information required by PERS. Reports shall include wage, service, and demographic data related to that pay period.

(3) The report required under section (2) of this rule shall be acceptable to PERS and transmitted on forms furnished by the agency or in an equivalent format. The report shall be transmitted electronically, faxed, or postmarked, as applicable, no later than three business days following the end of each pay period listed in section (4) below.

(4) PERS shall assign the employer to one of the following pay periods which most closely matches the employer's pay cycle:

(a) Monthly: the pay period ends on the last day of the month;

(b) Semi-monthly: the pay period ends on the fifteenth of the month and the last day of the month;

(c) Weekly: the pay period ends the Friday of every week, commencing January 2, 2004; or

(d) Biweekly: the pay period ends every other Friday, commencing January 9, 2004.

(5) If the report required under section (2) of this rule is accepted by PERS, PERS shall notify the employer of any exceptions and the employer will have 10 business days to reconcile its report. The corrected report must be transmitted electronically, faxed, or postmarked, as applicable, to PERS no later than 10 business days from the date of notification to avoid the penalty described under section (6) of this rule.

(6) Failure of an employer to transmit the report required under section (2) of this rule shall make the employer liable for a penalty equal to one percent of the total amount of the prior year's annual contributions or \$2000, whichever is less, for each month the employer is delinquent.

(7) The PERS Executive Director will have the discretion to waive the penalty described in section (6) of this rule for all reports due from January 1, 2004 through December 31, 2005. Following that period of time, penalties may be waived by the Director only upon written petition from the employer.

(8) The effective date of this rule is January 1, 2004.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.050 & 238.705

Hist.: PERS 25-2003, f. 12-30-03 cert. ef. 1-1-04; PERS 29-2004, f. & cert. ef. 11-23-04; PERS 13-2005, f. & cert. ef. 7-5-05

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## 459-070-0110

### Employer Remittance of Contributions

(1) Definition. "Statement date" means the date a statement of contributions or penalty due is generated by PERS.

(2) Once PERS receives the report described in OAR 459-070-0100(2) and (5), it shall issue a statement of contributions and any penalty due, if applicable.

(3) Unless otherwise agreed upon by the PERS Executive Director and the employer, an employer shall transmit the amount of employee contributions, employer paid employee contributions, and employer contributions for the Individual Account Program along with the corresponding contributions to fund the pension programs, for each pay period to the Board so that it shall be electronically transferred no later than five business days from the statement date, under the provisions of OAR 459-005-0225.

(4) Failure of any employer to transmit contributions within the time limit specified in section (3) will make the employer liable for a penalty equal to one percent of the total amount of contributions due for that pay period for each month the employer is delinquent.

(5) If an employer transmits an amount less than the contributions required by section (3) of this rule, PERS shall allocate the contributions received in the following order:

- (a) To the Individual Account Program;
- (b) To the Pension Program;
- (c) To the PERS Fund.

(6) The PERS Executive Director will have the discretion to waive the penalty described in section (4) of this rule for all contributions due from January 1, 2004 through December 31, 2005. Following that period of time, penalties may be waived by the Director only upon written petition from the employer.

(7) If PERS is required to invoice an employer for employee contributions and corresponding employer contributions on wages paid in previous reporting periods, an amount equal to the earnings that would have been credited to affected members and employers for those years, if any, may be added to the applicable account and charged to the employer.

(8) The effective date of this rule is January 1, 2004.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.050 & 238.705

Hist.: PERS 25-2003, f. 12-30-03 cert. ef. 1-1-04; PERS 29-2004, f. & cert. ef. 11-23-04;

PERS 13-2005, f. & cert. ef. 7-5-05

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## Oregon University System, Eastern Oregon University Chapter 579

**Adm. Order No.:** EOU 2-2005

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

**Certified to be Effective:** 7-7-05

**Notice Publication Date:** 6-1-05

**Rules Amended:** 579-012-0000, 579-012-0010

**Subject:** Amend Contested Case Procedures to satisfy pending Student Code of Conduct changes.

**Rules Coordinator:** Lara Moore—(541) 962-3773

## 579-012-0000

### Definitions

(1) "Affected Party" means any person who seeks a hearing under OAR 579-015-0005(5), or any other person entitled to a contested case hearing but does not mean a person whose complaint is subject to being processed by a grievance procedure.

(2) "Hearing Officer" means an individual or committee designated to conduct a contested case proceeding. When a committee is to serve as hearing officer, a presiding officer will be designated who will have the power to conduct and rule on preliminary matters, to administer oaths and affirmations, to issue subpoenas and to rule on evidentiary matters. In order for a committee to hear a contested case, a majority of the identified members must be present. When both faculty and students are members, at least one of each must be present. The term Hearing Officer, whenever used in these rules, shall include both the individual hearing officer and the committee.

Stat. Auth.: ORS 183.341 & 351

Stats. Implemented: ORS 183.341 & 351.070

Hist.: EOOSC 2-1993(Temp), f. & cert. ef. 6-7-93; EOOSC 3-1993, f. & cert. ef. 8-2-93; EOU 2-2005, f. & cert. ef. 7-7-05

## 579-012-0010

### Entitlement to Contested Case Hearing

(1) An affected party shall be entitled to a contested case hearing in which the affected party's individual legal rights, duties, or privileges are required by statute or constitution to be determined only after an institution hearing, and in all cases in which an affected party is seeking return of money retained by or on deposit with institution and in all cases in which the institution is requiring the payment of claimed past indebtedness as a prerequisite to registration or other future benefit, except as provided in section (2) of this rule.

(2) An affected party is not entitled to a contested case hearing when:

(a) A contested case hearing is waived by the affected party, either expressly or by timely failure to request a contested case hearing;

(b) In any case involving collection of fees or fines for parking, improper parking, traffic fines or penalties.

Stat. Auth.: ORS 183.341 & 351

Stats. Implemented: ORS 183.341 & 351.070

Hist.: EOOSC 2-1993(Temp), f. & cert. ef. 6-7-93; EOOSC 3-1993, f. & cert. ef. 8-2-93; EOU 2-2005, f. & cert. ef. 7-7-05

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**Adm. Order No.:** EOU 3-2005

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

**Certified to be Effective:** 7-7-05

**Notice Publication Date:** 6-1-05

**Rules Amended:** 579-075-0000

**Subject:** Amend Use of Vehicles for University Business to reflect updated fees and regulations.

**Rules Coordinator:** Lara Moore—(541) 962-3773

## 579-075-0000

### Eastern Oregon University Use of Vehicles for University Business

(1) For purposes of this rule:

(a) "Vehicle" means cars, vans, trucks, and buses;

(b) "State-owned vehicle" means a vehicle owned by or registered in the name of the State of Oregon, the Board, or any institution;

(c) "Hired vehicle" means a vehicle that is leased, hired, or rented by the State, the Board, or any institution. This definition excludes borrowed vehicles;

(d) "Borrowed vehicle" means a vehicle that is not a "state-owned vehicle" or a "hired vehicle" but that is used on state business. "Borrowed vehicle" includes vehicles owned by employees, students, and others participating in institution activities, and used on state business;

(e) "State business" means any activity for which all or part of the expenses may be reimbursed by any unit, department, or program of the Department of Higher Education.

(f) "Officially sanctioned program" means any program undertaken to further the instructional, research or service missions of the institution or designed to promote the cultural and physical development of students. Such programs include but are not limited to:

(A) Academic department programs;

(B) Co-curricular programs;

(C) Intramural, recreational sports, club sports, and intercollegiate athletic programs;

(D) Any student programs or activities identified by the president or designee. Examples of such activities include but are not limited to student government, student housing activities, activities sponsored by student organizations that are consistent with the institution's mission.

(E) No motor vehicle owned, leased, or controlled by the state shall be used to transport students to an event or activity not directly related to an officially sanctioned program.

(2) Authorization for the use of a state vehicle will be based on the following:

(a) Athletic schedules will have priority if their request is turned in at the beginning of the term to cover their scheduled athletic contests during that term. If the schedules are not turned in at the beginning of the term, they will be served on a first come, first served basis.

(b) All use must be for the convenience of the college.

(c) Personal use is prohibited.

(3) Vehicles will be driven only by employees or agents of the university who are holders of a valid driver's license. Approval to drive vehicles on University business must be obtained from the Facilities and Planning Office. Driving record information for drivers will be verified with the Department of Motor Vehicles. Persons with physical impairments which might cause them to have problems operating a vehicle safely, having questionable driving records and citations for alcohol or other drug

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abuse, or who have been convicted of a major traffic offense, as defined in ORS 153.500, within three years of proposed operation are prohibited from driving vehicles on institution-approved business. It is the policy of Eastern to check the driving record of all faculty, staff, student and non-employee drivers and to reserve the right to check the driving record of any prospective driver. The Shipping and Receiving Office will maintain a current list of all approved drivers.

(4) When an employee uses his/her private vehicle on an authorized trip, the employee shall be reimbursed at the prevailing rate approved by the Oregon State Board of Higher Education. Vehicles used for state-authorized travel should be equipped as set forth in Subsection (6)(a) through (f).

(5) It is the responsibility of the driver of a vehicle to insure that there is an operable safety belt for every passenger.

(6) University motor pool vehicles are equipped and maintained to meet or exceed State of Oregon standards. It is the responsibility of the Motor Pool to verify before every trip that a vehicle is safe to operate and is equipped with the following required safety devices:

- (a) Emergency reflector kit and/or flares;
- (b) Ice scraper;
- (c) Flashlight;
- (d) First aid kit;
- (e) Accident-reporting forms and instructions for handling emergencies;

(f) Tire chains or other approved traction devices when required by weather conditions.

(7) Vehicle inspection and emergency equipment inventory form is included in the "car book" supplied by the Shipping and Receiving Office — the "car book" also includes credit cards for gas, oil, and emergency repairs and instructions to be followed if repairs are needed or there is an emergency — and must be signed by the driver. The Motor Pool staff is responsible for insuring that the vehicle is in safe operating condition and that all emergency items are in the vehicle.

(8) The Shipping and Receiving Office (telephone number, 2-3570) should be notified if a vehicle is not in safe operating condition or if any of the above items are missing before the trip commences so that the vehicle can be repaired or missing items supplied. Any problems that develop with a vehicle during a trip that would cause it to be unsafe to operate must be repaired — see instructions in "car book." All problems with a vehicle, no matter how minor, must be reported on the mileage report form included in the "car book" so they can be attended to by Motor Pool staff. Vehicles are inspected and serviced by Motor Pool staff after each trip. Private vehicles used on state business must be maintained in a safe operating condition and must carry the safety devices set forth in Section 6 of this rule.

(9) It is the responsibility of the driver to operate the vehicle in a safe manner. The maximum speed is the posted speed limit. Any driver of a state vehicle exceeding the speed limit may assume the responsibility in case of an accident resulting from speeds exceeding the posted speed limit. Individuals who receive a police citation while driving a state car shall be subject to disciplinary action and/or have driving privileges revoked. On lengthy trips, it is the responsibility of the driver to avoid drowsiness by making frequent rest stops and using certified relief driver.

(10) Group travel involving students: Trip itinerary information must be included on the Travel Authorization Form and should specify approximate departure and arrival times. A list of students traveling on field trips and other extracurricular activities or to athletic events must be filed with the Travel Authorization Form (see example in Appendix A). Information to be included on the student list includes the name, address, and telephone number of the person to be notified in the event of an emergency. This list will be forwarded by the Purchasing Agent/Risk Manager to the Vice President for Student Affairs. Student Travel Information Forms are available in School and Unit offices and on the Business Services Web Site.

(11) The names of all drivers must be included on the trip itinerary. Provisions must be made for the use of relief drivers during long trips. Please allow adequate time to research driving records through the Department of Motor Vehicles if alternate drivers have not previously been approved through the Shipping and Receiving Office.

(12) In the event of an injury accident, the following authorities are responsible for contacting relatives of travelers and must be notified immediately:

- (a) Sheldon Nord, VP, Student Affairs; Student Injuries; O: 962-3635;
- (b) Marvin Wagle, VP, Business, Finance & Facilities; Employee Injuries; H: 910-0408; O: 962-3773;
- (c) Khosrow Fatemi, President; If unable to contact VP, Student Affairs; H: 963-3512; O: 962-3512.

(13) All accidents must be reported promptly following procedures outlined in the information included in the "car book."

(14) Lectures, classes, athletic contests, field trips and other extra-curricular activities will be cancelled when vehicle or weather conditions create unacceptable risk to the health and safety of vehicle passenger.

(15) Except in the case of authorized travel such as intercollegiate athletic trips, musical group tours, or other student activity which requires travel across state borders, no state vehicles will be used for travel outside of Oregon except for western Idaho, northern California and most of the state of Washington.

(16) Passengers are not permitted to ride in University vehicles unless they will be performing duties for the University at the destination.

(17) Use of university vehicles will be charged to School or Unit budgets at the following rates:

- (a) 15 passenger vans — \$0.65 per mile;
- (b) Sedans — \$0.45 per mile;
- (c) 4-Wheel Drive Jeeps — \$0.50 per mile;
- (d) Mini Vans — \$0.55 per mile.

(A) 24-hour notification of car request cancellation or \$15.00 no-show charge assessed.

(B) Car books must be returned by 8:30 am following day of car usage (so the car can get serviced for next user) or \$15 return charge.

(C) A minimum cleanup charge \$10.00 for more than normal trash and dirt.

(D) Sedans driven 45 miles or less round trip charge \$17.50. 15 passenger vans driven 45 miles or less round trip charge \$28.50. All 4-wheel drives driven 45 miles or less roundtrip charge \$20.00. All mini vans driven 45 miles or less roundtrip charge \$22.50.

(E) The deductible for collision is \$2500.00 per accident and will be borne by the department assigned the vehicle.

(F) Vehicles should be returned with full tanks of gas, or a \$10.00 service fee will be added to the total charges.

(18) State vehicles are scheduled through the Shipping and Receiving Office and requests must be made on the form provided.

(19) Use of a Personal Car. Travel by private vehicle in lieu of a state vehicle may be authorized in order to permit a combination of official travel with a holiday or weekend trip, vacation, or for other valid personal reasons. Reimbursement for mileage is at the Oregon State System of Higher Education approved rate. Reimbursement is limited to the mileage the employee would have traveled on official business, and the meal and lodging allowance to which he or she would have been entitled while on official travel.

(20) Vehicles loaned to the University must meet the State of Oregon safety standards. Loaned vehicles MUST be inspected by Motor Pool staff and the approval of Vice President for Business, Finance & Facilities obtained before used.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: EOSC 1-1987, f. & ef. 12-28-87; EOSC 5-1995, f. & cert. ef. 2-16-95; EOU 2-2001, f. & cert. ef. 9-28-01; EOU 3-2005, f. & cert. ef. 7-7-05

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**Adm. Order No.:** EOU 4-2005

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

**Certified to be Effective:** 7-7-05

**Notice Publication Date:** 6-1-05

**Rules Adopted:** 579-040-0007, 579-040-0013

**Rules Amended:** 579-040-0005, 579-040-0010, 579-040-0015, 579-040-0020, 579-040-0030, 579-040-0035, 579-040-0045, 579-060-0140, 579-060-0150, 579-060-0160, 579-060-0170, 579-060-0180, 579-060-0190

**Rules Repealed:** 579-040-0025, 579-040-0040

**Subject:** The amendments to the rules of Student Code of Conduct and Residence Life and Eocene Court Policies were made to reflect institutional changes over the last decade. The changes reflect current verbiage within the field of Student Services.

**Rules Coordinator:** Lara Moore—(541) 962-3773

**579-040-0005**

**Student Code of Conduct**

(1) Eastern Oregon University is dedicated to a campus culture that upholds the highest standards of individual, interpersonal and academic excellence. The college experience involves a fusion of the learning process with the development of positive attitudes and standards of behavior. In



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addition to growing intellectually and academically, students should form attitudes of scholarship, personal responsibility, and respect for others by:

- (a) Exemplifying personal and academic integrity;
- (b) Respecting the dignity, rights and property of all persons;
- (c) Opposing bigotry and prejudice and striving to be open to differences in people, ideas and opinions, encouraging community support of these differences;

(d) Demonstrating concern for others, their safety and their need for conditions which support their work and development.

(e) Commitment to these ideals requires students to refrain from and discourage behaviors which threaten the freedom and respect every individual deserves.

### (2) Definitions:

(a) The term "University" means Eastern Oregon University.

(b) The term "student" includes all persons taking courses at Eastern Oregon University, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the Student Code of Conduct, who are not officially enrolled for a particular term but who have a continuing relationship with the University or who have been notified of their acceptance for admission are considered "students" as are persons who are living in University residence halls. This Student Code of Conduct does apply at all locations of the University, including Distance Education students.

(c) The term "faculty" means any person hired by the University to conduct classroom or teaching activities or who is otherwise considered by the University to be a member of its faculty.

(d) The term "University official" includes any person employed by the University, performing assigned administrative or professional responsibilities.

(e) The term "member of the University community" includes any person who is a student, faculty member, University official or any other person employed by the University. A person's status in a particular situation shall be determined by the Senior Hearings Officer.

(f) The term "University premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the University.

(g) The term "organization" means any number of persons who have complied with the formal requirements for University recognition or registration.

(h) The term "Campus Hearings Officer" means any person or persons authorized by the Senior Hearings Officer to determine whether a student has violated the Student Code of Conduct and to implement sanctions that may be imposed when a Student Code of Conduct violation has been committed.

(i) The term "Senior Hearings Officer" is that person designated by the University President to be responsible for the administration of the Student Code of Conduct.

(j) The term "Student Conduct Coordinator" means a University official authorized by the Senior Hearings Officer to insure procedural fairness for all Accused Students, is responsible for scheduling disciplinary hearings and/or establishing records, and serves as Secretary to the Hearings Officer(s) and Student Hearings Committee.

(k) The term "Student Hearings Committee" means any person or persons authorized by the Senior Hearings Officer to serve on the committee to determine whether a student has violated the Student Code of Conduct and to recommend sanctions that may be implemented when a Student Code of Conduct violation has been committed.

(l) The term "shall" is used in the imperative sense.

(m) The term "may" is used in the permissive sense.

(n) The term "policy" means the written regulations of the University as found in, but not limited to, the Student Code of Conduct, Residence Life Handbook, the University web page(s), computer use policy, and Undergraduate/Graduate Catalogs.

(o) The terms related to Academic Honesty "cheating, fabrication, facilitation, plagiarism or tampering" are defined in the Academic Honesty Code.

(p) The term "Complainant" refers to any person who submits a charge alleging that a student violated the Student Code of Conduct. When a student believes that he/she has been a victim of another student's misconduct, the student who believes he/she has been a victim will have the same rights under the Student Code of Conduct as are provided to the Complainant, even if another member of the University community submitted the charge itself.

(q) The term "Accused Student" means any student accused of violating the Student Code of Conduct.

(3) **The following are offenses subject to disciplinary action: Code.** The University may initiate disciplinary action and impose sanctions against any student, officially recognized student organization, or academic department/group which commits any of the following acts proscribed by the State Board of Higher Education and the University:

(a) Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other institutional activities, including the institution's public service functions or other authorized activities on institutionally owned or controlled property.

(b) Obstruction or disruption which interfered with the freedom of movement, both pedestrian and vehicular, on institutionally owned or controlled property.

(c) Possession or use of fire arms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities on institutionally owned or controlled property, in contravention of law or institutional regulations.

(d) Detention or physical abuse of any person, or conduct which is intended to threaten imminent bodily harm or endanger the health of any person or any institutionally owned or controlled property.

(e) Malicious damage or misuse or theft of institutional property, or the property of any other person where such property is located on institutionally owned or controlled property, or, regardless of location, is in the care, custody, or control of an institution.

(f) Refusal by any person, while on institutional property, to comply with an order of the institutional executive or appropriate authorized official or officials, to leave such premises because of conduct proscribed by the code when such conduct constitutes a danger to personal safety, property, or educational or other appropriate institutional activities on such premises.

(g) Unauthorized entry to or use of institutional facilities, including the buildings and grounds.

(h) Use, possession, or distribution of illegal drugs on institutionally owned or controlled property.

(i) Inciting others to engage in any of the conduct or to perform any of the acts prohibited herein. Inciting means that advocacy or proscribed conduct which calls upon the person or persons addressed for imminent action, and is coupled with a reasonable apprehension of imminent danger to the functions and purposes of the institution, including the safety of its students, faculty, and officials, and the protection of its property.

(j) Academic Dishonesty: cheating, fabrication, facilitation, plagiarism or tampering in connection with an academic program of the institution.

(k) Forging, altering, misusing, or mutilating University documents, records, identification, educational materials, or other University property.

(l) Sexual assault, sexual harassment, or any other non-consensual verbal or physical sexual activity including the support or assistance of such activities. For specific definitions please see the Sexual Assault Policy.

(m) Stalking, defined as repeatedly contacting another person when a) the contacting person knows or should know that the contact is unwanted by the other person; and b) the contact causes the other person reasonable apprehension of imminent physical harm or the contacting person knows or should know that the contact causes substantial impairment of the other person's ability to perform the activities of daily life. Contacting includes but is not limited to communicating with or remaining in the physical presence of the other person.

(n) Hazing, defined as an act which endangers the mental or physical health or safety of a student, or which destroys or removes public or private property, or which endangers or harms animals, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization. The express or implied consent of the victim will not be a defense. Apathy or acquiescence in the presence of hazing are not neutral acts; they are a violation of this code.

(o) Disorderly conduct includes but is not limited to: vulgar, indecent, defamatory, or obscene conduct or expression on University-owned or controlled property or at University-sponsored or supervised functions or events; any unauthorized use of electronic or other devices to make an audio or video record of any person while on University premises without his/her prior knowledge, or without his/her effective consent when such a recording is likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom.

(p) Possession or consumption of alcohol beverages by persons under 21 years of age, or furnishing of alcoholic beverages to persons under 21 years, on University owned or controlled property or at University sponsored or supervised activities. Individuals of legal drinking age in recognized student housing may possess and consume alcoholic beverages only

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in their private rooms, and dispensing devices such as kegs and taps, and large containers such as “party balls,” are not permitted. Use of alcohol in any other campus location is prohibited unless specifically authorized in OAR 845-006-0347, which governs the conditions under which alcoholic beverages may be consumed in areas other than housing units on the University campus. Regulations concerning use of alcoholic beverages by students in University housing units and by recognized student organizations on or off campus are detailed in the Eastern Oregon University Drug and Alcohol Policy, the Alcohol Beverage Use Policy and the Tailgating Policy.

(q) Use of tobacco products in unauthorized locations on campus in violation of state law, University, or public health regulations.

(r) Violating University parking regulations or other misuse of a vehicle, which violates the law or University policy.

(s) Intentionally furnishing false information, including false identification.

(t) Distributing, publishing or posting materials, soliciting funds, selling items, engaging in commercial activity, erecting structures, exhibiting items, displaying films and videos, using official University insignias or materials, or participating in performances and activities without proper authorization or not in accordance with the University Open Forum (Time, Place, Manner) Policy.

(u) Attempted or actual theft or misappropriation of property, equipment, materials, services, or data of the University, faculty, staff, students or guests.

(v) Attempted or actual theft or other abuse of computer facilities and resources, including but not limited to: unauthorized entry into a file, to use, read, or change the contents, or for any other purpose; unauthorized transfer of a file; use of another individual’s identification and/or password; use of computing facilities and resources to interfere with the work of another student, faculty member or University official; use of computing facilities and resources to send obscene or abusive messages; use of computing facilities and resources to interfere with normal operation of the University computing system; use of computing facilities and resources in violation of copyright laws; any violation of the University Acceptable Use Policy.

(w) Knowingly possessing stolen property, equipment, materials, services, or data.

(x) Violation of any University policy, rule, or regulation published in hard copy or available electronically on the University website.

(y) Abuse of the Student Conduct System, including but not limited to: failure to obey the notice from the Senior Hearings Officer, Student Conduct Coordinator, a Campus Hearings Officer, or University official to appear for a meeting or hearing as part of the Student Conduct System; falsification, distortion, or misrepresentation of information before a Campus Hearings Officer or Student Hearings Committee; disruption or interference with the orderly conduct of a hearing proceeding; institution of a student conduct code proceeding in bad faith; attempting to discourage an individual’s proper participating in, or use of, the student conduct system; attempting to influence the impartiality of a member of a Student Hearings Committee or a Campus Hearings Officer prior to, and/or during the course of, the hearing proceedings; harassment (verbal or physical) and/or intimidation of a member of a Student Hearings Committee or a Campus Hearings Officer prior to, during, and after a hearing proceeding; failure to comply with the sanction(s) imposed under the Student Code of Conduct; influencing or attempting to influence another person to commit an abuse of the Student Conduct System.

(z) Violation of any federal or state law or city or local ordinance or University rule.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOSC 5(Temp), f. 3-31-77, ef. 4-1-77; EOSC 10, f. & ef. 8-15-77; EOSC 5-1992, f. 11-16-92, cert. ef. 1-1-93; EOU 4-2005, f. & cert. ef. 7-7-05

## 579-040-0007

### Jurisdiction

(1) The provisions of OAR 579-040-0005 apply to all students and activities on University owned or controlled property; during any University-sponsored activity or the activity of a University-sponsored or recognized organization, regardless of location; or when the behavior poses a clear threat to any persons or to property on campus. “Activities” include, but are not limited to field trips, athletic events, and all extra-curricular activities or theatre/music productions. Examples of behaviors which pose a clear threat may include, but are not limited to, physical or sexual assault, rape, sexual harassment, stalking or illegal weapons use.

(2) In general, the off-campus activities of students are viewed as their personal business. When a student is charged by federal, state, or local

authorities with a violation of law, the University will not request or agree to special consideration for that individual because of his or her status as a student. If the alleged offense is also being processed under the Student Code of Conduct, the University may advise off-campus authorities of the existence of the Student Code of Conduct and of how such matters are typically handled within the University community. The University will attempt to cooperate with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators (provided that the conditions do not conflict with campus rules or sanctions). Individual students and other members of the University community, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate. When a student violates local, state, or federal laws and, at the same time, violates the Student Code of Conduct, either on or off campus, the University reserves the option of initiating disciplinary action on its own. Such actions are particularly likely when Eastern Oregon University student leaders (athletes, ASEOU officers, Ambassadors, Residence Hall staff, etc.) are involved.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOU 4-2005, f. & cert. ef. 7-7-05

## 579-040-0010

### Student’s Rights and Responsibilities

(1) Eastern Oregon University students retain and enjoy all rights guaranteed to citizens by the Constitution and laws of both the United States and the state of Oregon. Examples of such rights include but are not limited to the following:

(a) The right of reasonable access to University facilities and programs, and the right to learn free from unlawful discrimination or other arbitrary and impulsive treatment.

(b) The right of free inquiry, expression, and assembly subject to constitutional limitations regarding time, place, and manner.

(2) Students charged with violations of University regulations have the following rights in accordance with Due Process (OAR 579-040-0013) after a complaint has been filed with the Office of Student Affairs:

(a) The opportunity to select whether a Campus Hearings Officer or the Student Hearings Committee will hear the allegation(s) of complaint.

(b) Written notice to include:

(A) Copies of all documents or complaints that have led to charges being brought forward or a hearing being scheduled. The exception to this is when anonymous charges have been filed, in which case the accusations must be corroborated with testimony, or other information that can be shared with the accused student;

(B) Name of the Hearings Officer and names of Student Hearing Committee members (when appropriate);

(C) Reference to the particular section(s) of the Student Code of Conduct that is/are involved in the complaint(s);

(D) Time, location and other relevant information regarding the conduct violation(s);

(E) A copy of the Student Code of Conduct and the procedures to ensure Due Process.

(c) The consequences and/or sanctions will be consistent with the Student Code of Conduct.

(d) To be advised by counsel at the hearing if the student makes all arrangements for counsel to be present at the student’s expense. The student who is advised by counsel is still obligated to represent him/her self at the hearing.

(e) Opportunity to review all information being considered at a disciplinary hearing.

(f) Opportunity to have witnesses or documents in support of his/her defense.

(g) Opportunity to appeal the decision rendered as a result of the disciplinary hearing.

(h) In the case of suspension or expulsion/dismissal, the Senior Hearings Officer must review the Hearings Officer’s decision and/or the Student Hearings Committee’s recommendation.

(3) Students complained against have the following responsibilities:

(a) To appear at the designated time and place for a hearing to answer the charges filed. Failure to appear at the disciplinary hearing will result in the Hearings Officer or Student Hearings Committee issuing an order based on the information available.

(b) To meet with the Student Conduct Coordinator to review disciplinary hearing policies and procedures.

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(c) To provide a list of all witnesses who will appear in his/her behalf to the Hearings Officer or Student Hearings Committee at least 48 hours prior to the scheduled disciplinary hearing.

(d) To maintain civil decorum during the hearing process.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOCS 5(Temp), f. 3-31-77, ef. 4-1-77; EOCS 10, f. & ef. 8-15-77; EOCS 5-1992, f. 11-16-92, cert. ef. 1-1-93; EOU 4-2005, f. & cert. ef. 7-7-05

## 579-040-0013

### Due Process

Procedural fairness is basic to the proper enforcement of all University regulations. Accordingly, no disciplinary action shall be initiated or sanction imposed against students or student organizations until they have been notified in writing of the charges against them and their rights under this Code, and given the opportunity to be heard:

(1) The Student Conduct Coordinator shall insure that the best interests of students and student organizations are served, regardless of whether disciplinary action is taken.

(2) Students shall have an opportunity to participate in the formulation of all regulations and policies pertaining to student discipline at Eastern Oregon University.

(3) All University regulations and policies pertaining to student discipline shall be published, distributed, or posted in such a manner as to furnish adequate notice of their contents to students or student organizations.

(4) Regulations and disciplinary sanctions affecting the conduct of students shall be based on general principles of equal treatment.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOU 4-2005, f. & cert. ef. 7-7-05

## 579-040-0015

### Disciplinary Hearing Procedures

University disciplinary proceedings may be instituted against a student charged with conduct that potentially violates both the criminal law and Eastern Oregon University's Student Code of Conduct (that is, if both possible violations result from the same factual situation) without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under the Student Code of Conduct may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus at the discretion of the Senior Hearings Officer. Determinations made or sanctions imposed under the Student Code of Conduct shall not be subject to change because criminal charges arising out of the same facts giving rise to violation of University rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant. Disciplinary hearing proceedings at Eastern Oregon University need not mirror courtroom proceedings. At a disciplinary hearing, civil and criminal technical rules of evidence, applicable to such cases, shall not apply.

(1) The Senior Hearings Officer, appointed by the President, is responsible for coordination of the University's student disciplinary proceedings. University housing discipline is administered by the Residence Life staff, Athletic discipline is administered by the Athletic Director, but such matters will also be referred to the Office of Student Affairs when a student's status at the University must be reviewed. The Senior Hearings Officer shall designate a Student Conduct Coordinator who will coordinate the activities of the Hearings Officers and Student Hearings Committee in regard to student conduct procedures. The Student Conduct Coordinator shall be responsible for maintaining disciplinary hearings and/or issues records. These records shall include a summary of the disciplinary proceedings and results and the appointed hearings officer acting on the case. The Student Conduct Coordinator shall serve as Secretary to the Hearings Officers and Student Hearings Committee.

(2) Any member of the University community may file a complaint against a student for violation(s) of the Student Code of Conduct. A Complaint may be submitted in writing on a University Complaint Form, in person, via email or telephone, or on an incident report form to the Office of Student Affairs and/or the Student Conduct Coordinator. Any complaints should be submitted as soon as possible after the event takes place, preferably within 24 hours. Upon receipt of a complaint, the Student Conduct Coordinator, in conjunction with the Senior Hearings Officer, will determine whether or not the complaint is deemed sufficient as to facts or laws and whether or not it should be forwarded to a Hearings Officer. If the complaint is forwarded for a hearing, the Student Conduct Coordinator will afford the student the opportunity to meet with the Coordinator for the purposes of discussing the options for disposition of the case and discuss the student's rights and responsibilities as proscribed in OAR 579-040-0010.

At the meeting with the accused student, the Student Conduct Coordinator will describe the hearing options available to the student. These options are:

(a) Campus Hearings Officer Presiding; or

(b) Student Hearings Committee Presiding (a subcommittee of the Assembly Student Affairs Committee).

(3) The complaint will be assigned to a Hearings Officer or the Student Hearings Committee. A time shall be set for a hearing, not less than five or more than fifteen calendar days after the student has been notified. Maximum time limits for scheduling of hearings may be extended at the discretion of the Student Conduct Coordinator. The Student Conduct Coordinator will work with the Hearings Officer and/or the Student Hearings Committee to arrange for a hearing to review the complaint, and determine the subsequent appropriate institutional response.

(4) **Disciplinary Sanctions.** The following decisions may be rendered as a result of a disciplinary hearing:

(a) Dismissal of the complaint.

(b) An informal settlement including mandated counseling referral(s).

(c) Restitution: Reimbursement by dollar amount, by transfer of property, or by provision of services to the University or a member of the University community in accordance with the nature of the violation in an amount not in excess of actual expenses, damages, or losses incurred.

(d) Required Educational Activities: Mandatory participation in educational activities or programs of community service.

(e) Restrictions: Removal from a living group, or from the use of specific University facilities, or denial of the use of a vehicle on campus, or other restrictions consistent with the violation committed.

(f) Warning: Official notice, in writing, to a student that his or her conduct or actions are in violation of the Student Code of Conduct. The continuation of such conduct or actions may result in further disciplinary action.

(g) Reprimand — severe or formal reproof.

(h) Probation: A written reprimand for violation of specified regulations. Probation will be for one to three academic quarters, and may include loss of privileges, restitution, and/or required educational activities. Placement on probationary status includes observation and review of behavior and the student must demonstrate compliance with the Student Code of Conduct. A student on probation is not in "good standing" with the University. Students on probation are subject to suspension if found in violation of the Student Code of Conduct during the probationary period.

(i) Loss of Privileges: Denial of specified privileges for a designated period of time.

(j) Discretionary Sanctions: Work assignments, essays, service to the University, or other related discretionary assignments.

(k) Residence Hall Suspension: Separation of the student from the residence halls for a designated period of time, after which the student is eligible to return. Conditions of readmission may be specified.

(l) Residence Hall Expulsion: Permanent separation of the student from the residence halls.

(m) Disciplinary Suspension:

(A) Suspension:

(i) Exclusion from the University for a specific period of time. Suspended students are normally denied the privileges and services provided to currently enrolled students, including residing in University-owned or recognized student housing, attending class, or using other University services or facilities. Suspension is generally for one year; however, the period of suspension may be specified for any period;

(ii) The conditions of suspension typically take effect immediately after the student has been informed of the decision. If an appeal is filed, the imposition of the suspension will be delayed until the conclusion of the appeal process. However, if a pending disciplinary hearing or appeal may result in suspension, as determined by the Student Code of Conduct, awarding of the academic degree sought will be postponed pending the outcome of the disciplinary hearing.

(B) Deferred Suspension: Placement on deferred suspension status during which there is observation and review of behavior. If the student is found to further violate University regulations during this period, the student is suspended without further hearings. Deferred suspension may be for a period of one term up to and including the remainder of a student's enrollment at the University.

(n) Expulsion: Permanent removal of eligibility to attend Eastern Oregon University.

(o) Revocation of Admission and/or Degree: Should the University discover that a student, or former student, has received an Eastern Oregon University degree, or has been admitted, under false pretenses (i.e., academic dishonesty, falsifying transcripts), or has pending Student Code of



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Conduct violations, attempts will be made to adequately correct the situation. If the student is uncooperative or unwilling to meet requirements consistent with institutional, college and departmental graduation requirements, her/his degree may be revoked until all requirements are met.

(p) Withholding Degree: The University may withhold awarding a degree otherwise earned until the completion of the process set forth in this Student Code of Conduct, including the completion of all sanctions imposed, if any.

(q) Students whose behavior violates the Academic Honesty Code are subject to additional academic sanctions, including failing the course, removal from an academic department, and removal from a college, that may be imposed by the instructor, department chair or dean.

(r) At the President's discretion, the President or designated representative may notify law enforcement agencies of potentially illegal acts on campus or at University sponsored activities. Criminal or other charges arising from acts on campus or at University sponsored activities will proceed independently of on-campus disciplinary proceedings but may arise out of findings of said proceedings.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOSC 5(Temp), f. 3-31-77, ef. 4-1-77; EOSC 10, f. & ef. 8-15-77; EOSC 5-1992, f. 11-16-92, cert. ef. 1-1-93; EOU 4-2005, f. & cert. ef. 7-7-05

## 579-040-0020

### Disciplinary Hearing

Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in Disciplinary Hearings at Eastern Oregon University. Contested Case procedures in ORS Ch 183 do not apply to these hearings.

(1) Disciplinary Hearings with a Hearings Officer are intended to determine a factual basis for assertions in complaints filed. Disciplinary Hearings shall not be open to the public. The Hearings Officers are empowered to:

- (a) Make findings of fact;
- (b) Dismiss the case;
- (c) Refer the student for counseling;
- (d) Impose any sanction listed in OAR 579-040-0015 of this Code.

(A) The Complainant, the Accused Student and the Student Conduct Coordinator may arrange for witnesses to present pertinent information to the Hearings Officer. The University will try to arrange the attendance of possible witnesses who are members of the University community, if reasonably possible, and who are identified by the Complainant and/or Accused Student at least two weekdays prior to the hearing. Witnesses will provide information to and answer questions from the Hearings Officer. The person(s) complained against shall appear along with witnesses and other parties requested by the Hearings Officer to be in attendance. All parties may have counsel to serve as advisors at their own expense. Questions may be suggested by the Accused Student and/or Complainant to be answered by each other or by other witnesses. This will be conducted by the Hearings Officer. Cross-examination of witnesses, however, shall be restricted to the person(s) accused, and the Hearings Officer. This method is used to preserve the educational tone of the hearing and to avoid creation of an adversarial environment. Questions of whether potential information will be received shall be resolved in the discretion of the Hearings Officer.

(B) A secretary may record information presented, accept information, statements, and prepare a summary of the Hearings Officer's findings. No transcription of a disciplinary hearing will be made. After the portion of the hearing concludes in which all pertinent information has been received, the Hearings Officer will determine whether the Accused Student has violated each Code of Conduct which the student is charged with violating. Every effort will be made to issue a written decision within two business days by the Hearings Officer after the conclusion of the hearing. However, no fixed deadline is imposed.

(2) Disciplinary Hearings before the Student Hearings Committee. The Complainant, the Accused Student and the Student Conduct Coordinator may arrange for witnesses to present pertinent information to the Student Hearings Committee. The University will try to arrange the attendance of possible witnesses who are members of the University community, if reasonably possible, and who are identified by the Complainant and/or Accused Student at least two weekdays prior to the hearing. Witnesses will provide information to and answer questions from the Student Hearings Committee. The Student Hearings Committee has the power to:

- (a) Make findings of fact;
- (b) Determine whether or not the student has violated the Code;
- (c) Recommend to dismiss the case;

(d) Recommend any sanction listed in 579-040-0015 of the Student Code of Conduct to the Senior Hearings Officer.

(A) The person(s) complained against shall appear along with witnesses and other parties requested by the Student Hearings Committee to be in attendance. All parties may have counsel to serve as advisors at their own expense. Questions may be suggested by the Accused Student and/or Complainant to be answered by each other or by other witnesses. This will be conducted by the Student Hearings Committee. Cross-examination of witnesses, however, shall be restricted to the person(s) accused, and the Student Hearings Committee.

(B) A secretary may record information presented, accept information, statements, and prepare a summary of the Student Hearings Committee's findings. No transcription of a disciplinary hearing will be made. Every effort will be made to issue a written decision within two business days by the Senior Hearings officer after the conclusion of the hearing. However, no fixed deadline is imposed.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOSC 5(Temp), f. 3-31-77, ef. 4-1-77; EOSC 10, f. & ef. 8-15-77; EOSC 5-1992, f. 11-16-92, cert. ef. 1-1-93; EOU 4-2005, f. & cert. ef. 7-7-05

## 579-040-0030

### Appeals

Following a disciplinary hearing, the student complained against has the right to an appeal.

(1) A decision of a disciplinary hearing may be appealed to the Vice President for Student Affairs in writing within five working days after notice. The Vice President will review all information presented at the hearing and may interview witnesses who appeared. The Vice President will make a decision within five working days after review. The Vice President's decision shall be final.

(2) The request for an appeal must include specific justification, including: errors, failure to consider all of the information presented, or any other action, including any new information not known at the time of the original hearing, which denied the student a fair hearing.

(3) Appeals related to the sanction of Deferred Suspension, Suspension or Expulsion will be considered by the Student Hearings Committee, a subcommittee of the Eastern Oregon University Assembly Student Affairs Committee. The Student Hearings Committee will make a recommendation to the Vice President for Student Affairs. The Vice President will review the recommendation and make a decision within five working days after review. The Vice President's decision shall be final. Procedures to be followed are available from the Office of Student Affairs.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOSC 5(Temp), f. 3-31-77, ef. 4-1-77; EOSC 10, f. & ef. 8-15-77; EOSC 5-1992, f. 11-16-92, cert. ef. 1-1-93; EOU 4-2005, f. & cert. ef. 7-7-05

## 579-040-0035

### Emergency Action

A student exhibiting behavior disruptive to the academic process or other institutional activities who lacks the capacity to respond to disciplinary procedures or the capacity to understand the nature or the wrongfulness of the conduct in question or who poses potential harm to the welfare of self or others, will be referred to the Vice President for Student Affairs for immediate action. Such action may include restrictions on the person's presence at the University or its events until a disciplinary hearing can be held. The hearing must be held within two working days after the Vice President's order unless the student requests an extension.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOSC 5(Temp), f. 3-31-77, ef. 4-1-77; EOSC 10, f. & ef. 8-15-77; EOSC 5-1992, f. 11-16-92, cert. ef. 1-1-93; EOU 4-2005, f. & cert. ef. 7-7-05

## 579-040-0045

### Student Records

(1) All complaints include the creation of a disciplinary file secured in the Office of Student Affairs. Sanctions at the level of probation and above place the student outside of "good standing" with the University for the duration of the sanction. Multiple sanctions may be imposed where appropriate.

(2) Disciplinary Probation shall involve written notice that is to be kept in the student's disciplinary file. There shall also be a Disciplinary Probation Hold entered in Banner on the students record with the wording: "contact Student Affairs." After the period of Probation has expired and the student has met all proscribed obligations, the Disciplinary Probation Hold will be removed from the student's Banner record.

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(3) Disciplinary Suspension shall involve removal of privileges to enroll at the University for a specified period of time and there shall be a written notice that is to be kept in the student's disciplinary file. There shall also be a Disciplinary Suspension Hold entered in Banner on the student's record with the wording "contact Student Affairs." After the period of suspension has expired and the student has met all proscribed obligations, the Disciplinary Suspension Hold will be removed from the student's Banner record. A student suspended for misconduct and wishing to return to the University after the suspension period must notify the Office of Student Affairs in writing. The notification should include a description of the student's activities since the suspension went into effect.

(4) Disciplinary Expulsion shall involve permanent removal of privileges to enroll at the University and there shall be a written notice that is to be kept in the student's disciplinary file. There shall also be a Disciplinary Expulsion Hold entered in Banner on the student's record with the wording: "contact Student Affairs" followed by the date of the disciplinary action.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Hist.: EOSC 5(Temp), f. 3-31-77, ef. 4-1-77; EOSC 10, f. & ef. 8-15-77; EOU 4-2005, f. & cert. ef. 7-7-05

## 579-060-0140

### Definitions

(1) Family Housing: All apartments operated by Eastern Oregon University which are rented specifically and only to students who qualify under the rules to rent such apartments, and all grounds and buildings used by tenants and/or Residence Life Staff in the operation and administration of the program.

(2) Family: A legally married couple under Oregon law, or a legally married couple with dependent children/child; or an unmarried person with legal custody of dependent children/child. One adult who lives with an unmarried qualified resident may be listed as a family member. Couples with recognized civil unions or domestic partnerships may also be considered.

(3) Student: A person who has applied for admission and, at the time of possession of the unit, accepted for admission to the University, and enrolls for eight (8) credits or more at the University for three of the four academic sessions each year of occupancy of the unit. A student must also make normal academic progress as described in the Catalog and remain as a student in good standing. Special permission must be obtained from the Director of Residence Life for any student tenant who drops below these academic requirements at any time and wishes to remain in EOU Family Housing.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 183 & OAR 580-011-0015

Hist.: EOSC 1-1994, f. & cert. ef. 3-7-94; EOU 4-2005, f. & cert. ef. 7-7-05

## 579-060-0150

### Qualifications for Family Housing (Eocene Court)

(1) Family Size: No more than two adults and two children, or one adult and three children may reside in an apartment. All residents must be included on the application form for Family Housing. Spouse and/or dependents listed on the application form must reside with the tenant in order to qualify for Family Housing. An infant under 12 months will not be counted in the total.

(2) Guests may not stay more than two weeks without the written permission from the Director of Residence Life.

(3) Status Change: If the tenant's student or family status changes so that the tenant is no longer eligible for Family Housing, the University will terminate tenancy by providing the tenant with 30 days written notice of the intent to do so.

(4) Proof of Eligibility: The University may require the applicant to provide custody papers or birth certificates, marriage license, and letter of admission. The University reserves the right, upon 24 hours notice to inspect the apartment premises in the accompaniment of the tenant to confirm those residing in the apartment.

(5) Priority: Priority for assigning space in Family Housing is by date of receipt of application and fee from qualified applicants, providing the applicant can move into the apartment within 45 days.

(6) Policies: The Oregon University System Fee Book, the Eastern Oregon University Fee Manual and the Family Housing Handbook of Eastern Oregon University are by reference included in the Oregon Administrative Rules herein.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 183 & OAR 580-011-0015

Hist.: EOSC 1-1994, f. & cert. ef. 3-7-94; EOU 4-2005, f. & cert. ef. 7-7-05

## 579-060-0160

### Eligibility

(1) During the regular academic year, room assignments are contingent upon the applicant applying for admission to the University and enrolling for eight (8) credits or more each academic quarter the applicant is in residence. Any exceptions must be approved by the University Residence Life Department.

(2) Priority for room assignments will be first, currently housed residents returning for an additional year provided they sign up during the advertised open enrollment period; and second, new resident applicants based on the date the application fee and contract are received.

(3) Cohabitation is not allowed in residence hall rooms. Cohabitation is defined as having a guest of the opposite sex spend one or more nights in a residence hall room.

(4) International students are required to live in the residence halls during their first year at the University. This requirement will only be waived if authorized through the University waiver appeal process.

(5) EOU maintains a requirement for newly matriculated students to live on campus for a transition period. Campus live-in requirements are published annually in the University catalog and the Residence Life Handbook. Students wishing to be exempt from the requirement must receive approval from the EOU residence waiver appeal board.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 183 & OAR 580-011-0015

Hist.: EOSC 1-1994, f. & cert. ef. 3-7-94; EOU 4-2005, f. & cert. ef. 7-7-05

## 579-060-0170

### Residence Life Contract

(1) Each applicant for residence hall accommodations shall be required to sign a Residence Life Contract before occupying a room. All rules and regulations in the agreement and the Residence Life Handbook are binding. The Residence Life Contract may be canceled under the terms and conditions outlined in the contract.

(2) If a resident is evicted from, moves from, or otherwise leaves a residence hall before the end of the housing contract period, but does not withdraw from the institution, the resident is assessed a cancellation fee. Cancellation fees and prorated charges for residents who enter or leave the residence halls during an academic quarter shall be in accordance with the conditions outlined in the Residence Life Contract and Oregon University System Fee Manual.

(3) With an approved petition by the Residence Life Department, a resident may be released from their Residence Life Contract without paying the cancellation fee. The main criteria used in approving such a petition are as follows:

(a) Health reasons, verified by a licensed physician and Student Health Services;

(b) Marriage, upon receipt of a copy of the marriage certificate;

(c) Student teaching, practicums and other academic programs requiring the student to live in another community;

(d) If the student moves to the permanent residence of parents or legal guardians;

(e) If a resident, not restricted by being included in the University's Live-in requirement, finds a suitable replacement to take over the contract, i.e., a student who meets the eligibility requirements and who has not previously contacted the Residence Life Office to make arrangements to live in the residence halls;

(f) If a resident is required by the University to live in a residence hall and the University then waives this requirement for the individual.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 183 & OAR 580-011-0015

Hist.: EOSC 1-1994, f. & cert. ef. 3-7-94; EOU 4-2005, f. & cert. ef. 7-7-05

## 579-060-0180

### Hall Assignment and Room Changes

(1) The Residence Life Office has the responsibility for assigning all residence hall room assignments.

(2) All room changes and hall transfers must be approved through the Residence Life Office and coordinated with the building staff.

(3) The Residence Life Office may reassign residents for administrative or disciplinary reasons with 24 hours notice. In the event that a resident is a potential threat to self or others, he or she may be relocated to a new housing space, or may be required to vacate the premises immediately.

(4) The Residence Life Program may terminate a resident's contract for lack of payment, non-academic attendance or for disciplinary reasons as outlined in the Residence Life Contract, Residence Life Handbook, and

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Oregon University System Fee Manual, requiring the resident to vacate the premises with 24 hours notice.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 183 & OAR 580-011-0015  
Hist.: EOSC 1-1994, f. & cert. ef. 3-7-94; EOU 4-2005, f. & cert. ef. 7-7-05

## 579-060-0190

### Policies

Policies that govern the operation of the residence halls shall be in accordance with the Residence Life Handbook, Residence Life Contract, and the Oregon University System Fee Manual. These documents are by reference included in the Oregon Administrative Rules herein.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 183 & OAR 580-011-0015  
Hist.: EOSC 1-1994, f. & cert. ef. 3-7-94; EOU 4-2005, f. & cert. ef. 7-7-05

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**Oregon University System,  
Portland State University  
Chapter 577**

**Adm. Order No.:** PSU 1-2005(Temp)

**Filed with Sec. of State:** 7-15-2005

**Certified to be Effective:** 7-15-05 thru 12-28-05

**Notice Publication Date:**

**Rules Amended:** 577-060-0020

**Subject:** This amendment establishes additional fees, changes, fines, and deposits for General Services for the 2005-2006 fiscal year.

**Rules Coordinator:** Ellen DeVries—(503) 725-3443

## 577-060-0020

### Schedule of Fees for General Services and Other Charges

The Schedule of Fees for General Services and Other Charges for the 2005–2006 Fiscal Year are hereby adopted by reference by Portland State University.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 351.070 & 352.360  
Stats. Implemented: ORS 352.360  
Hist.: PSU 16(Temp), f. 8-24-77, ef. 9-1-77; PSU 18, f. & ef. 10-4-77; PSU 19(Temp), f. & ef. 10-11-77; PSU 20, f. & ef. 11-18-77; PSU 3-1978(Temp), f. 6-19-78, ef. 7-1-78; PSU 7-1978, f. & ef. 9-5-78; PSU 1-1979, f. & ef. 9-17-79; PSU 3-1980, f. & ef. 9-4-80; PSU 2-1981, f. & ef. 9-10-81; PSU 3-1982, f. & ef. 9-3-82; PSU 1-1983, f. & ef. 2-8-83; PSU 2-1983, f. 6-22-83, ef. 7-1-83; PSU 1-1984, f. 6-8-84, ef. 7-1-84; PSU 1-1985, f. 6-26-85, f. 7-1-85; PSU 1-1986, f. 6-25-86, ef. 7-1-86; PSU 1-1987, f. 6-19-87, ef. 7-1-87; PSU 3-1987(Temp), f. & ef. 8-11-87; PSU 5-1987, f. & ef. 10-27-87; PSU 5-1988, f. & cert. ef. 7-18-88; PSU 7-1988(Temp), f. & cert. ef. 11-29-88; PSU 3-1989, f. & cert. ef. 7-26-89; PSU 5-1990, f. & cert. ef. 7-5-90; PSU 2-1991(Temp), f. & cert. ef. 6-28-91; PSU 3-1991, f. & cert. ef. 8-7-91; PSU 4-1991(Temp), f. & cert. ef. 12-4-91; PSU 1-1992, f. & cert. ef. 1-17-92; PSU 2-1992, f. & cert. ef. 6-16-92 (and corrected 6-19-92); PSU 1-1993, f. & cert. ef. 6-11-93; PSU 2-1993(Temp), f. & cert. ef. 7-13-93; PSU 3-1993(Temp), f. & cert. ef. 7-30-93; PSU 4-1994, f. & cert. ef. 11-3-94; PSU 1-1995, f. & cert. ef. 8-9-95; PSU 1-1996(Temp), f. 1-18-96, cert. ef. 3-1-96; PSU 3-1996, f. & cert. ef. 6-27-96; PSU 1-1997, f. & cert. ef. 8-1-97; PSU 4-1998, f. & cert. ef. 9-17-98; PSU 4-1999, f. & cert. ef. 8-11-99; PSU 2-2000, f. & cert. ef. 8-1-00; PSU 1-2001, f. & cert. ef. 8-14-01; PSU 2-2003, f. 6-27-03, cert. ef. 7-1-03; PSU 4-2003(Temp), f. & cert. ef. 11-18-03 thru 5-14-04; PSU 1-2004, f. & cert. ef. 8-20-04; PSU 1-2005(Temp), f. & cert. ef. 7-15-05 thru 12-28-05

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**Adm. Order No.:** PSU 2-2005(Temp)

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

**Certified to be Effective:** 7-7-05 thru 12-28-05

**Notice Publication Date:**

**Rules Amended:** 577-001-0100, 577-001-0105, 577-001-0110, 577-001-0115, 577-001-0120

**Subject:** This temporary amendment amends the Portland State University Rules of Procedure for Contested Cases to conform to the requirements of the Federal and State Constitutions and statutes, specifically ORS 351.088.

**Rules Coordinator:** Ellen DeVries—(503) 725-3443

## 577-001-0100

### Contested Case Rule

OAR 577-001-0105 through 577-001-0120 may be referred to as the Portland State University rules of procedure for contested cases. They carry out the requirement of ORS 183.341(2) with respect to contested case proceedings and are to be interpreted consistently with the Oregon Administrative Procedure Act (ORS Chapter 183). Any situation not provided for in these rules shall be governed by the Act.

Stat. Auth.: ORS 351

Stats. Implemented:  
Hist.: PSU 15, f. & ef. 6-9-77; PSU 2-2005(Temp), f. & cert. ef. 7-7-05 thru 12-28-05

## 577-001-0105

### Applicability

These rules apply where the University:

- (1) Is required by statute or constitution to determine the legal rights, duties, or privileges of a party by means of a contested case hearing; or
- (2) Provides in any matter for a contested case hearing.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: PSU 15, f. & ef. 6-9-77; PSU 2-2005(Temp), f. & cert. ef. 7-7-05 thru 12-28-05

## 577-001-0110

### Hearing Board

(1) Definition. As used in these rules, “hearing board” means any person or body of persons authorized by the University to hear a contested case.

(2) Powers of Hearing Board. When a contested case is referred to it by the proper authority, the hearing board shall be empowered to do the following with respect to that case:

- (a) Give notice of and hold hearings;
- (b) Issue subpoenas and order the taking of depositions;
- (c) Examine witnesses;
- (d) Hold conferences with all parties, before or during the hearing, to settle or simplify the issues;
- (e) Make proposed findings of fact and recommendations for disposition of the case.

(3) Hearing Board Chairperson. One member of each hearing board shall be designated to chair the board and to preside at any hearings held. The chairperson, on behalf of the board, shall regulate the conduct of the hearing, shall administer oaths or affirmations to witnesses and may eject from a hearing any person who interferes with its orderly procedure. Subject to the board’s approval, the chairperson shall rule upon admissibility of evidence and offers of proof.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: PSU 15, f. & ef. 6-9-77; PSU 2-2005(Temp), f. & cert. ef. 7-7-05 thru 12-28-05

## 577-001-0115

### Preparation and Hearing of Contested Case

(1) Notice. After referral of a contested case to it, the hearing board shall serve on each party, personally or by registered or certified mail, a notice containing the following:

- (a) A statement of the time and place of the hearing;
- (b) A statement of the authority and jurisdiction under which the hearing is to be held;
- (c) Reference to the statutes or rules involved;
- (d) A short and plain statement of the matters asserted or charged.

(2) Postponement. Upon motion of any party, for good cause shown, the hearing board may grant a postponement of the hearing.

(3) Counsel. Any party may elect to be represented by counsel, at the party’s expense. The hearing board may be assisted by counsel on matters of law and procedure.

(4) Verbatim Record. A verbatim record shall be made of any motions, rulings, and testimony at the hearing, but such record need not be transcribed unless requested by a party. The University may charge the cost of transcription to the party requesting a transcript.

(5) Evidence. Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. All testimony shall be upon oath or affirmation.

(6) Presentation by Parties. Every party shall have the right to present his or her case by oral, documentary, or other satisfactory evidence, and to conduct such cross examination as may be required, to the end that a full and complete disclosure of the facts may be made.

(7) Order of Hearing. At the discretion of the chairperson of the hearing board, the hearing shall be conducted in the following order:

- (a) Statement and evidence of complaining party (e.g. the University in disciplinary matters; the complainant in grievance proceedings);
- (b) Statement and evidence of responding party;
- (c) Rebuttal evidence of complaining party;
- (d) Closing arguments of complaining and responding parties.

(8) Burden of Proof. The complaining party shall be required to prove, by a preponderance of the evidence, any charges or allegations made by such party.

(9) Failure of Party to Appear at Hearing. Any party failing to appear at a hearing shall be deemed to have waived the right to a hearing. If one or



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more parties fail to appear, the remaining party or parties may present their cases to the hearing board.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: PSU 15, f. & ef. 6-9-77; PSU 2-2005(Temp), f. & cert. ef. 7-7-05 thru 12-28-05

## 577-001-0120

### Posthearing Procedure

(1) Duties of Hearing Board. After the hearing is closed, the Hearing Board shall prepare the following:

(a) All pleadings, motions, and other documents submitted by the parties;

(b) A summary of testimony heard;

(c) The verbatim record, whether or not transcribed;

(d) All other evidence received at the hearing;

(e) A statement of stipulations of the parties and of matters officially noticed;

(f) Proposed findings of fact and recommendations for disposition of the case.

(2) The documents listed above shall be transmitted to the President.

(3) Review by President. The President shall review so much of the material transmitted by the Hearing Board as he deems necessary. If the president is unable to reach a decision from the evidence and findings presented, the matter may be referred to the Hearing Board for further proceedings or deliberations.

(4) Proposed Order. If the decision reached by the President concerning disposition of the case is adverse to any party other than the University, the President shall serve upon all parties a proposed order, including findings of fact and conclusions of law, and shall afford to each party adversely affected an opportunity to file exemptions and present argument to the President.

(5) Final Order. After exceptions and argument, if any, on the proposed order have been received and considered, the President shall prepare a written final order, accompanied by findings of fact and conclusions of law which may, in the President's discretion, be in the form of a narrative opinion. Copies of the final order and accompanying findings and conclusions shall be mailed to each party or, if applicable, to each attorney of record.

Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: PSU 15, f. & ef. 6-9-77; PSU 1-1988(Temp), f. & cert. ef. 3-15-88; PSU 3-1988, f. & cert. ef. 6-16-88; PSU 2-2005(Temp), f. & cert. ef. 7-7-05 thru 12-28-05

## Oregon Youth Authority Chapter 416

**Adm. Order No.:** OYA 15-2005

**Filed with Sec. of State:** 6-30-2005

**Certified to be Effective:** 6-30-05

**Notice Publication Date:** 6-1-05

**Rules Amended:** 416-800-0010, 416-800-0050

**Subject:** 416-800-0010 Detailed definition of contracted service provider removed and language concerning trade professions added. 416-800-0050 Criminal History Review Process Language added to the various applicants outlined in the rule that allows the OYA to request additional criminal history checks when deemed appropriate by the agency. Contracted residential provider employees are subject to criminal history checks prior to the execution of a contract rather than referring to CAF licensing standards. Balance of the rule has been reorganized and reordered for clarity.

**Rules Coordinator:** Kimberly Walker—(503) 378-6834

## 416-800-0010

### Definitions

(1) Agency agreement: A written agreement between the Oregon State Police (OSP) and a criminal justice designated agency authorized to receive criminal offender information, as defined by Oregon statute and administrative rule. The agreement specifies the terms and conditions of accessing and receiving Oregon computerized criminal history information to assure compliance with state and federal regulations.

(2) Community work project: Links offenders with short-term or project oriented work assignments in the community. Offenders are supervised by a community member during the work assignment or project.

(3) Contracted service providers: Persons who have specialized skills, knowledge, and resources in the application of highly technical or scientific expertise, or exercise professional, artistic or management discretion or

judgment while working with offenders, or services that are performed by a competent or skilled worker.

(4) Criminal history check: The process used by the OYA to conduct criminal records background checks on persons, including computerized and/or fingerprint-based processes.

(a) Computerized criminal history checks: The access and use of automated or manual files, or associated systems available to the OYA as a criminal justice agency, through the Law Enforcement Data Systems (LEDS) including on-line information from the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC), and the National Law Enforcement Telecommunications System (NLETS).

(b) Fingerprint-based criminal offender information: Criminal offender information compiled and maintained by the Bureau of Criminal Identification regarding persons who have been arrested for crimes where law enforcement agencies have submitted fingerprints and other identifying data as required by state and/or federal statutes, or as deemed appropriate by the submitting law enforcement agency, for the purpose of identification.

(5) Criminal offender information: Records, including fingerprints and photographs, received, compiled, and disseminated for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement and release, and includes the OSP computerized criminal history system.

(6) Employee: An individual who holds a paid position with the OYA.

(7) Information required: All information requested by the OYA for processing applications, including fingerprints.

(8) Subject individual: A person who seeks to become an OYA employee, volunteer, or foster parent; contracted service provider working with offenders; or a community work project employer.

(9) Visitors: Persons who have limited access to OYA facilities or programs, including one-time access or as persons involved in group projects and performances. These persons are not allowed contact with OYA offenders outside the sight and hearing of OYA staff, and are, therefore, exempt from these criminal history check rules.

(10) Volunteers: Persons who, on a non-paid basis, provide service to the OYA. The provisions of OAR chapter 416, divisions 450 and 480 also apply.

(11) Foster parents: Persons who are issued a certificate of approval by the OYA to operate a foster home (OAR chapter 416, division 530). For the purpose of this rule, foster parent applicants also include members of the household, as discussed in OAR chapter 416, division 530.

Stat. Auth.: ORS 420A.025  
Stats. Implemented: ORS 181.010, 181.066, 181.511-580, 420A.010 & 420A.020  
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 5-1997, f. & cert. ef. 10-13-97; OYA 8-2002, f. & cert. ef. 1-18-02; OYA 8-2003, f. & cert. ef. 9-23-03; OYA 11-2005, f. & cert. ef. 4-20-05; OYA 15-2005, f. & cert. ef. 6-30-05

## 416-800-0050

### Criminal History Review Process

(1) The OYA has determined that persons whose backgrounds contain arrests, convictions, or adjudications of certain offenses increase the risk of exploitation and/or abuse of offenders in its custody, or compromise the safety and security of its close custody facilities. The OYA will deny access to offenders and/or facilities to persons with such backgrounds, as follows.

(a) Employment with the OYA.

(A) Applicants are subject to computerized and fingerprint-based criminal history checks conducted at the time of hire and promotion. Additional criminal history checks may be requested as deemed appropriate by OYA.

(B) Subject individuals whose criminal backgrounds include items noted in sections 3(a) or 3(b) of this rule will be denied opportunity for employment with the OYA.

(b) OYA volunteers or foster parents.

(A) Applicants are subject to computerized and fingerprint-based criminal history checks at initial application; followed by annual computerized checks. Additional criminal history checks may be requested as deemed appropriate by OYA.

(B) Subject individuals whose backgrounds include items from sections 3(a) or 3(b) of this rule are prohibited from serving as a foster parent or volunteer.

(c) Contracted service providers.

(A) Applicants are subject to a computerized criminal history check prior to execution of a contract. Additional criminal history checks may be requested as deemed appropriate by OYA. If a contract is extended beyond a two-year period, the OYA may require a new computerized criminal history check.

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(B) Subject individuals whose backgrounds include items from sections 3(a) or 3(b) of this rule are prohibited from serving as a contracted service provider.

(C) In addition, subject individuals who are licensed to provide a service to offenders must comply with all professional licensing and ethical standards of that profession.

(d) Contracted residential treatment providers. Employees of licensed residential treatment programs are subject to a computerized criminal history check prior to execution of a contract, and must comply with all professional licensing or ethical standards of that profession. Additional criminal history checks may be requested as deemed appropriate by OYA.

(e) Community work project employers.

(A) Applicants are subject to a computerized criminal history check at the time of initial contact with the OYA and annually thereafter. Additional criminal history checks may be requested as deemed appropriate by OYA.

(B) Subject individuals whose backgrounds include items noted in sections 3(a) or 3(b) of this rule are prohibited from employing offenders.

(C) In addition, employers of offenders must agree to conditions of supervision supplied by the OYA.

(2) The OYA may limit any person's scope of access or duties based on information contained within the background check. Such limits will be documented in writing and signed by the subject individual, the person responsible to supervise or oversee the person, and an Assistant Director, or designee.

(3) Applicable criminal background history:

(a) Convictions or adjudications for serious person-to-person crimes within any jurisdiction, including juvenile court, and other crimes, including but not limited to:

(A) Murder, including aggravated murder or manslaughter, and solicitation to commit;

(B) Unauthorized sexual conduct, including but not limited to bigamy, incest, abuse, neglect, abandonment of a child, sale or purchase of a child, or solicitation to commit; any conviction of offenses for which registration as a sex offender is required under federal or state statute; or any admission to a hospital or other facility in lieu of conviction for an offense for which registration as a sex offender is required under statute;

(C) Persons who are a perpetrator of sexual abuse as evidenced by a child protective service complaint, which was determined to be valid even if there was no successful criminal prosecution;

(D) Persons who have been convicted of or adjudicated delinquent in any jurisdiction, including juvenile court, of any felony or any drug- or alcohol-related charge within five years of application;

(E) Persons whose criminal histories include charges upon which no disposition has been made. Where possible, the OYA will seek further information to assess current status of the pending charges, and may require the subject individual to resolve such situations.

(b) Convictions, arrests or restraining orders for the following activities:

(A) Spousal abuse or domestic violence.

(B) A crime against children, including abuse, neglect, or pornography.

(C) A crime involving violence, including rape, sexual abuse, manslaughter or homicide.

(D) Physical assault.

(E) Battery.

(F) Drug or alcohol offenses.

(G) Weapons-related offenses.

(H) Animal abuse.

(4) Additionally, any person listed in OAR 416-800-0050(1) may be denied access to offenders and/or facilities if the OYA makes a determination that the person lacks moral fitness.

(a) Moral fitness extends to conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or nation.

(b) The following are indicators of a lack of moral fitness:

(A) Illegal conduct involving moral turpitude.

(B) Conduct involving dishonesty, fraud, deceit or misrepresentation.

(C) Intentional deception or fraud in any application, examination, or other document.

(D) Conduct that is prejudicial to the administration of justice.

(E) Conduct that adversely reflects on the person's fitness to perform in the position.

(F) Persons who make a false statement about a conviction, including by act of omission on an application.

(G) Dishonorable discharge from the armed forces.

(c) If the OYA makes lack of moral fitness determination, the burden will be upon the person affected by this determination to prove good moral fitness.

(5) The OYA may, in its discretion, review the following factors to determine whether to provide an exemption allowing a person, who is subject to OAR 416-800-0050(1) and whose criminal history includes item(s) found in OAR 416-800-0050(3)(b), access to offenders and/or facilities:

(a) The number of arrests in the subject individual's history;

(b) The time elapsed since the arrest(s);

(c) The circumstances surrounding the arrest(s);

(d) Whether the subject individual was charged or indicted for a crime related to the arrest;

(e) If applicable, whether the subject individual has successfully completed or participated in counseling, therapy, educational or employment opportunities since the arrest(s);

(f) The relationship between the circumstances of the arrest and the subject individual's ability to meet the qualifications of the position; and

(g) The person's age at the time of the offense.

Stat. Auth.: ORS 420A.025

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

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 5-1997, f. & cert. ef. 10-13-97; OYA 8-2002, f. & cert. ef. 1-18-02; OYA 8-2003, f. & cert. ef. 9-23-03; OYA 11-2005, f. & cert. ef. 4-20-05; OYA 15-2005, f. & cert. ef. 6-30-05

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**Adm. Order No.:** OYA 16-2005(Temp)

**Filed with Sec. of State:** 7-14-2005

**Certified to be Effective:** 7-14-05 thru 1-7-06

**Notice Publication Date:**

**Rules Adopted:** 416-425-0000, 416-425-0010, 416-425-0020

**Subject:** Effective immediately, the Oregon Youth Authority is temporarily adopting rules in order to implement HB 2141 (2005) relating to the assignment and transfer of OYA offenders, including offenders in the legal custody of the Department of Corrections (DOC) or other agencies who are placed in OYA physical custody, to a state mental hospital listed in ORS 426.010 or a facility designated by the Department of Human Services (DHS) for evaluation and treatment.

**Rules Coordinator:** Kimberly Walker—(503) 378-3864

## 416-425-0000

### Purpose

These rules prescribe procedures by which offenders in Oregon Youth Authority (OYA) close custody facilities may be transferred to a state mental hospital or a facility designated by the Department of Human Services (DHS) for evaluation and treatment.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 179.471, 179.473, 179.478, 420.500, 520.505 & 420.525

Hist.: OYA 16-2005(Temp), f. & cert. ef. 7-14-05 thru 1-7-06

## 416-425-0010

### Definitions

For purposes of these rules:

(1) Close custody facility: Any of the secure facilities operated by the OYA, including, but not limited to, youth correctional facilities, work/study camps, and transition camps.

(2) Facility designated by the Department of Human Services (DHS): A hospital or secure non-hospital facility designated by DHS to provide evaluation and treatment services for offenders under the age of 18.

(3) Mentally Ill offender: An offender who, because of a mental disorder or a severe emotional disorder, is one or more of the following:

(a) Dangerous to self or others;

(b) Unable to provide for basic personal needs and is not receiving such psychiatric care as is necessary for health or safety;

(c) An offender, who unless treated, will continue to a reasonable medical probability, to physically or mentally deteriorate so that the offender will become a person described under either or both subparagraph (a) or (b) above.

(4) Offender: A person placed in OYA close custody facilities, including inmates in the legal custody of the Department of Corrections (DOC).

(5) State Mental Hospital: As defined in ORS 426.010. Except as otherwise ordered by the DHS pursuant to ORS 179.325, the Oregon State Hospitals in Salem, Marion County, and Portland, Multnomah County, and the Eastern Oregon Psychiatric Center in Pendleton, Umatilla County, will be used as state hospitals for the care and treatment of mentally ill offenders age 18 and over who are transferred by the OYA pursuant to these rules.

Stat. Auth.: ORS 420A.025

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Stats. Implemented: ORS 179.471, 179.473, 179.478, 420.500, 520.505 & 420.525  
Hist.: OYA 16-2005(Temp), f. & cert. ef. 7-14-05 thru 1-7-06

## 416-425-0020

### Procedures for Transfer

(1) The OYA close custody facility Superintendent/Camp Director, or designee may request that the superintendent of a state mental hospital or a facility designated by DHS for evaluation and treatment accept a transfer of a mentally ill offender to a state mental hospital or facility designated by DHS, pursuant to these rules.

(2) If the superintendent of the state mental hospital or facility designated by DHS approves, the offender will be transferred.

(3) An offender may be transferred to a state mental hospital or a facility designated by DHS for stabilization and evaluation for mental health treatment for a period not to exceed 30 days unless the transfer is extended pursuant to an administrative commitment hearing required by paragraph (4) of this rule.

(4) DHS will provide for an administrative commitment hearing for administrative commitment or extension of the transfer of the offender if:

(a) DHS determines that administrative commitment for treatment for a mental illness is necessary or advisable or that DHS needs more than 30 days to stabilize or evaluate the offender; and

(b) The offender does not consent to the administrative commitment or an extension of the transfer.

(c) The administrative commitment hearing process will, at a minimum, include the following procedures:

(A) Written notice to the offender that an administrative commitment to a state mental hospital or a facility designated by DHS or an extension of the transfer is being considered. The notice required by this subparagraph must be provided far enough in advance of the hearing to permit the offender to prepare for the hearing.

(B) Disclosure to the offender, at the hearing, of the evidence that is being relied upon for the administrative commitment or the extension of the transfer.

(C) An opportunity, at the hearing, for the offender to be heard in person and to present documentary evidence.

(D) An opportunity, at the hearing, for the offender to present the testimony of witnesses and to confront and cross-examine witnesses called by the state. The opportunity required by this subparagraph may be denied upon a finding by the decision maker of good cause for not permitting the offender to present the testimony of witnesses or confront or cross-examine witnesses called by the state.

(E) An independent decision maker for the hearing.

(F) A written statement by the decision maker of the evidence relied upon by the decision maker and the reasons for administratively committing the offender or extending the transfer.

(G) A qualified and independent assistant for the offender to be provided by the state if the offender is financially unable to provide one.

(H) Effective and timely notice of the procedures required by subparagraphs (A) to (G) of this rule.

(5) An offender may not be administratively committed involuntarily unless the independent decision maker finds by clear and convincing evidence that the offender is a mentally ill offender as defined in these rules.

(6) The duration of an administrative commitment pursuant to an administrative commitment hearing may be no more than 180 days unless the administrative commitment is renewed in a subsequent administrative commitment hearing.

(7) Notwithstanding paragraph (6), an administrative commitment may not continue beyond the term of incarceration to which a DOC inmate was sentenced or beyond the period of time a youth offender may be placed in a youth correction facility.

(8) An offender who is transferred to a state mental hospital or to a facility designated by DHS has the rights to which the offender is entitled under ORS 179.485.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 179.471, 179.473, 179.478, 420.500, 520.505 & 420.525

Hist.: OYA 16-2005(Temp), f. & cert. ef. 7-14-05 thru 1-7-06

## Teacher Standards and Practices Commission Chapter 584

**Adm. Order No.:** TSPC 5-2005(Temp)

**Filed with Sec. of State:** 7-1-2005

**Certified to be Effective:** 7-1-05 thru 12-28-05

**Notice Publication Date:**

**Rules Amended:** 584-060-0012, 584-060-0013, 584-100-0046

**Rules Suspended:** 584-060-0011, 584-060-0021

**Subject:** OAR 584-060-0012 - Initial Teaching License: Reduces the term of the license from five years to three years.

OAR 584-060-0013 - Renewal of the Initial Teaching License: Reduces the term of renewal from five years to three years.

OAR 584-100-0046 - Preliminary Teaching License: Removes restriction of being provided for federal Title I programs only.

OAR 584-060-0011 - Initial Teaching License: Former rule replaced by OAR 584-060-0012.

OAR 584-060-0021 - Continuing Teaching License: Former rule replaced by OAR 584-060-0022.

**Rules Coordinator:** Victoria Chamberlain—(503) 378-6813

## 584-060-0011

### Initial Teaching License

Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted an Initial Teaching License. This license is issued for three years plus time to the applicant's next birth date and is renewable once under conditions specified below. It is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty.

(1) To be eligible for an Initial Teaching License, an applicant must satisfy all of the following general preparation requirements:

(a) A bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission.

**NOTE:** Awarding of a higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure.

(b) Completion in Oregon or another U.S. jurisdiction of an initial teacher education program approved by the commission, or completion of a U.S. or foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program.

(c) A passing score as currently specified by the commission on each of one or more tests of subject mastery for license endorsement, except for tests waived due to special academic preparation satisfactory to the commission together with five years of experience teaching the specialty on a license valid for the assignment in a public school or regionally accredited private school in a U.S. jurisdiction before holding any Oregon license.

(d) A passing score as currently specified by the commission on a test of basic verbal and computational skills, unless the applicant held an Oregon educator license before 1985 or has a regionally accredited doctor's degree.

(e) A passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission.

(2) To be eligible for an Initial Teaching License, an applicant must satisfy a recent experience requirement in one of the following ways during the three-year period immediately preceding application:

(a) Completion of an approved teacher education program; or

(b) Beginning and completion in a public school or regionally accredited private school in a U.S. jurisdiction of at least one academic year as a full-time licensed educator or two consecutive years as a half-time licensed educator on any license appropriate for the assignment, or equivalent experience as in a state or federal school; or

(c) Receipt of 6 semester hours or 9 quarter hours of academic credit, germane to teaching licensure, from a regionally accredited college or university; or

(d) Completion of one hundred eighty days of teaching in Oregon schools on a teaching license valid for the assignment; or

(e) Compliance with provisions of OAR 584-048-0020, Renewal of Teaching Licenses — Special Provisions; or

(f) A combination of such experience and credit may be submitted in satisfaction of this requirement in which one quarter hour of preparation equals 20 days of successful experience.

(3) To be eligible for an Initial Teaching License, an applicant must furnish fingerprints in the manner prescribed by the commission.

(4) The Initial Teaching License can be renewed for three years upon completion of recent educational experience verified by either:

(a) Completion of one academic year of educational work in any capacity at full time or two consecutive years at half-time, or 180 days of substitute teaching, in one or more of the following organizations: a public school or a regionally accredited private school in any U.S. governmental jurisdiction, a state or federal school in Oregon, an Oregon private elemen-



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tary or secondary school registered by the state Department of Education, an Oregon private proprietary career school licensed by the superintendent of public instruction, a degree-granting college or university in Oregon, a special state-supported school in Oregon, the state Department of Education itself, the Teacher Standards and Practices Commission, the Department of Human Resources, a juvenile court school in Oregon, an Oregon education service district, or a school operated by the U.S. Department of Defense; or

(b) Completion of 6 semester hours or 9 quarter hours of preparation completed in an approved institution during the life of the current teaching license.

**NOTE:** See OAR 584-048-0020 for Special Provisions for renewal of an Initial Teaching License.  
Stat. Auth.: ORS 342  
Stats. Implemented: ORS 342.120-143, 342.153, 342.165 & 342.223-232  
Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 10-2004(Temp), f. & cert. ef. 10-20-04 thru 3-1-05; TSPC 1-2005, f. & cert. ef. 1-21-05; Suspended by TSPC 5-2005(Temp), f. & cert. ef. 7-1-05 thru 12-28-05

## 584-060-0012

### Initial Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted an Initial Teaching License for three years.

(2) The Initial Teaching License is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty. (See 584-060-0052 for Authorization Levels.)

(3) To be eligible for an Initial Teaching License, an applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator; and

(b) Hold a bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission. A master's degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure; and

(c) Complete an initial teacher education program approved by the commission in Oregon, or complete a state-approved teacher preparation program in any U.S. jurisdiction, or complete a foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program; and

(d) Receive a passing score as currently specified by the commission on each of one or more tests of subject mastery for license endorsement or authorization; and

(A) Any subject-matter test, except the basic skills tests, may be waived if the applicant demonstrates special academic preparation satisfactory to the commission together with five years of experience teaching the specific subject matter on a license valid for the assignment in a public school or regionally accredited private school in a U.S. jurisdiction before holding any Oregon license. The five years of experience must be acquired entirely outside of the state of Oregon and must be obtained while holding an out-of-state license valid for the assignment.

(B) Some applicants may be eligible for alternative assessment for waiver of the subject-matter tests only. (See OAR 584-052-0030 to 0033 regarding Alternative Assessment guidelines and regulations.)

(e) Receive a passing score as currently specified by the commission on a test of basic verbal and computational skills; (See 584-060-0002(7) for definition of Basic Skills Tests.)

(f) Receive a passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission; and

(g) Furnish fingerprints in the manner prescribed by the commission. (See OAR 584-036-0062 for Criminal Records Check Requirement.)

(h) Obtain a first aid card pursuant to ORS 342.126.

(i) Complete a recent experience during the three-year period immediately preceding application. (See OAR 584-005-0005(54) for definition of Recent Experience.)

(4) Applicants who have completed programs from states other than Oregon will be required to submit a C-2 form from the institution granting program completion, in addition to transcripts, verifying completion of the teacher education program. A license from another state valid for unrestricted full time teaching may be accepted in lieu of a C-2. A teaching license issued by the U.S. Department of Defense will be considered as a license from another state. Completion of alternative routes teaching pro-

grams through school districts or other avenues are subject to Executive Director approval.

(5) The Initial Teaching License may be renewed one time for three years upon showing progress toward completion of the renewal requirements as described in OAR 584-060-0013 during the life of the Initial Teaching License. The progress must meet or exceed the equivalent of 3 semester hours or 4.5 quarter hours of graduate coursework germane to the license or directly germane to public school employment. For subsequent renewals, see OAR 584-060-0013, Renewal of the Initial Teaching License.

(6) The Executive Director may grant an extension to the Initial Teaching License for a term determined by the director, if and only if extraordinary circumstances can be demonstrated that the teacher was unable to complete the requirements for Continuing Teaching License during the life of the Initial Teaching License.

Stat. Auth.: ORS 342  
Stats. Implemented: ORS 342.120 - 342.165 & 342.136  
Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 5-2005(Temp), f. & cert. ef. 7-1-05 thru 12-28-05

## 584-060-0013

### Renewal of the Initial Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a renewal of the Initial Teaching License for three years.

(2) To be eligible for renewal under these provisions, the applicant must satisfy all the requirements in OAR 584-060-0012, including achieving the first successful renewal of the Initial Teaching License in accordance with OAR 584-060-0012(5).

(3) To be eligible for a second renewal of the Initial Teaching License granted on the basis of a completed teacher preparation program culminating in a bachelor's degree, the applicant must:

(a) Complete a master's degree or higher in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree; or

(b) In lieu of a master's degree, a candidate must complete graduate level coursework germane to the license or directly germane to public school employment as follows:

(A) At least ten semester hours or fifteen quarter hours in subject-matter coursework; and

(B) At least ten semester hours or fifteen quarter hours in graduate-level education-related coursework; and

(C) At least ten semester hours or fifteen quarter hours in graduate-level electives.

(4) To be eligible for a second renewal of the Initial Teaching License granted on the basis of a post-baccalaureate completed teacher preparation program, whether the program culminates in a master's degree, the applicant must complete one of the following (a-c):

(a) Six semester hours or nine quarter hours of graduate level academic credit from a regionally accredited college or university; or

(A) The graduate level credit must:

(i) Be completed after the Initial Teaching License has first been issued; and

(ii) Be germane to the teaching license or directly germane to public school employment; and

(iii) May include pedagogy, or content related to an existing endorsement or authorization, or content related to a new endorsement or authorization. (Completion of this required coursework does not guarantee completion of commission approved endorsement requirements offered by any Oregon college or university).

(b) A commission-approved school district program determined to be equivalent to (a) above; or

(c) Any commission-approved professional assessment.

(5) The Initial Teaching License may be renewed repeatedly for three years upon completion of:

(a) All the requirements in either (3) or (4) above; and

(b) Any one of the following educational experiences as a licensed educator on a license appropriate for the assignment:

(A) One academic year full-time; or

(B) Two academic years half-time or more; or

(C) One hundred and eighty (180) days as a substitute; or

(D) Completion of 6 semester hours or 9 quarter hours of preparation completed in an approved institution during the life of the current teaching license; or

(E) A combination of (A)-(D) above may be submitted in satisfaction of this requirement in which one quarter hour of preparation equals 20 days of successful experience;

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(F) Meeting any of the special provisions for renewal contained in OAR 584-048-0015 or 584-048-0020; and

(c) A professional development plan in accordance with OAR 584-090.

(6) A teacher may choose to become eligible for the Continuing Teaching License in lieu of continuous renewal of the Initial Teaching License (See OAR 584-060-0022.)

(7) Teachers issued Initial Teaching Licenses prior to July 1, 2005 are not subject to the renewal timeline requirements in this rule. However teachers must meet the requirements of either subsection (3) or subsection (4) above, prior to the expiration of ten (10) years from the date of the first Initial License was issued. The additional year granted to licensees holding Initial Teaching License prior to October 13, 2003, will be included in the ten year calculation for meeting the requirements of this rule.

(8) This rule applies to all Initial Teaching Licenses issued after December 1998.

Stat. Auth.: ORS 342  
Stats. Implemented: ORS 342.120 - 342.165 & 342.136  
Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 5-2005(Temp), f. & cert. ef. 7-1-05 thru 12-28-05

## 584-060-0021

### Continuing Teaching License

Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a Continuing Teaching License. This license is issued for five years and is renewable repeatedly under conditions specified below. It is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty.

(1) To be eligible for a Continuing Teaching License, an applicant must hold a master's or higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree.

(2) To be eligible for a Continuing Teaching License, an applicant must have completed as part of the master's degree or separately an advanced program in teaching competencies beyond the initial license preparatory program, consisting of at least six semester hours or nine quarter hours of graduate credit or the equivalent. If the credit is not awarded directly by an institutional program for continuing licensure approved by the commission, all advanced teaching competencies must be validated through assessment by an approved professional development program offered by an institution, an employer, or the two working together. Exceptionally, the applicant may qualify for waiver of that institutional or employer assessment of advanced competencies in one of the following ways:

(a) By obtaining certification from the National Board for Professional Teaching Standards; or

(b) By obtaining a current Certificate of Clinical Competence awarded by the American Speech and Hearing Association for those holding a communication disorders endorsement; or

(c) By having a regionally accredited doctor's degree in education.

(3) To be eligible for a Continuing Teaching License, an applicant after receiving a Transitional or an Initial Teaching License must have three years of successful experience teaching at least half time in one or more of the following schools in Oregon: a public elementary or secondary school, an education service district school, a state-operated or state-supported school, a federal school, a private elementary or secondary school accredited by the Northwest Association of Schools and Colleges, a private elementary or secondary school registered by the state Department of Education, or a private proprietary career school licensed by the superintendent of public instruction.

(4) The Continuing Teaching License can be renewed for five years whenever two requirements have been met during the preceding five-year period:

(a) Completion of one academic year as a full-time licensed educator or two consecutive years as a half-time licensed educator or 180 days of substitute teaching, on any license appropriate for the assignment, in one or more of the following schools in Oregon: a public elementary or secondary school, an education service district school, a state-operated or state-supported school, a federal school, a private elementary or secondary school accredited by the Northwest Association of Schools and Colleges, a private elementary or secondary school registered by the state Department of Education, or a private proprietary career school licensed by the superintendent of public instruction.

(b) Establishment, maintenance, and reporting of a continuing professional development plan in accordance with OAR 584-090.

Stat. Auth.: ORS 342  
Stats. Implemented: ORS 342.120-143, 342.153, 342.165 & 342.223-232

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 6-2002, f. & cert. ef. 10-23-02; Suspended by TSPC 5-2005(Temp), f. & cert. ef. 7-1-05 thru 12-28-05

## 584-100-0046

### Preliminary Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, a qualified applicant shall be granted a Preliminary Teaching License for up to one-year.

(2) To be eligible for a Preliminary Teaching License, the applicant must meet the following requirements:

(a) Hold a bachelor's degree;

(b) Document completion of a teacher education program in any state;

(c) Demonstrate knowledge of applicable civil rights laws by completing the required civil rights affidavit;

(d) Demonstrate subject matter competency as defined in OAR 584-100-0006(14);

(e) Furnish fingerprints in the manner prescribed by the Commission; and

(f) If do not hold a current first aid card, must obtain an approved first aid card within 90 days of receiving the license.

(3) At the expiration of one-year, in order to remain highly qualified, educators holding a Preliminary Teaching License must meet all remaining requirements for the Initial Teaching License.

(4) The Preliminary Teaching License is valid for one year only, and cannot be renewed or extended.

(5) The Preliminary Teaching License is not eligible for district conditional assignment permits.

(6) Eligible applicants will also receive a three-year unrestricted Transitional Teaching License pursuant to ORS 584-060-0161.

Stat. Auth.: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 5-2005(Temp), f. & cert. ef. 7-1-05 thru 12-28-05

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## Travel Information Council Chapter 733

**Adm. Order No.:** TIC 2-2005

**Filed with Sec. of State:** 6-16-2005

**Certified to be Effective:** 6-16-05

**Notice Publication Date:** 4-1-05

**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

## 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 six logos for each type of service shall be displayed along each approach to the intersection. A maximum of two logos for each of 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 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; TIC 2-2005, f. & cert. ef. 6-16-05

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123-065-4150	2-25-05	Repeal	4-1-05	123-065-4750	2-25-05	Amend	4-1-05
123-065-4160	2-25-05	Repeal	4-1-05	123-065-4760	2-25-05	Amend	4-1-05
123-065-4200	2-25-05	Amend	4-1-05	123-065-4800	2-25-05	Adopt	4-1-05
123-065-4220	2-25-05	Amend	4-1-05	123-065-4950	2-25-05	Amend	4-1-05
123-065-4230	2-25-05	Amend	4-1-05	123-065-4960	2-25-05	Amend	4-1-05
123-065-4240	2-25-05	Amend	4-1-05	123-065-4970	2-25-05	Amend	4-1-05
123-065-4250	2-25-05	Amend	4-1-05	123-065-4980	2-25-05	Amend	4-1-05
123-065-4260	2-25-05	Amend	4-1-05	123-065-4990	2-25-05	Amend	4-1-05
123-065-4270	2-25-05	Amend	4-1-05	123-065-7000	2-25-05	Amend	4-1-05
123-065-4280	2-25-05	Amend	4-1-05	123-065-7100	2-25-05	Amend	4-1-05
123-065-4300	2-25-05	Amend	4-1-05	123-065-7200	2-25-05	Amend	4-1-05
123-065-4310	2-25-05	Amend	4-1-05	123-065-7300	2-25-05	Amend	4-1-05
123-065-4313	2-25-05	Adopt	4-1-05	123-065-7400	2-25-05	Amend	4-1-05
123-065-4315	2-25-05	Amend	4-1-05	123-065-7500	2-25-05	Amend	4-1-05
123-065-4318	2-25-05	Adopt	4-1-05	123-065-7600	2-25-05	Amend	4-1-05
123-065-4320	2-25-05	Amend	4-1-05	123-065-7700	2-25-05	Amend	4-1-05
123-065-4323	2-25-05	Adopt	4-1-05	123-065-8000	2-25-05	Adopt	4-1-05
123-065-4325	2-25-05	Adopt	4-1-05	123-065-8100	2-25-05	Adopt	4-1-05
123-065-4328	2-25-05	Adopt	4-1-05	123-065-8200	2-25-05	Adopt	4-1-05
123-065-4330	2-25-05	Amend	4-1-05	123-065-8300	2-25-05	Adopt	4-1-05
123-065-4340	2-25-05	Amend	4-1-05	123-065-8400	2-25-05	Adopt	4-1-05
123-065-4343	2-25-05	Repeal	4-1-05	123-070-1000	2-25-05	Amend	4-1-05
123-065-4345	2-25-05	Adopt	4-1-05	123-070-1100	2-25-05	Amend	4-1-05
123-065-4355	2-25-05	Adopt	4-1-05	123-070-1150	2-25-05	Amend	4-1-05
123-065-4360	2-25-05	Repeal	4-1-05	123-070-1200	2-25-05	Amend	4-1-05
123-065-4365	2-25-05	Adopt	4-1-05	123-070-1300	2-25-05	Amend	4-1-05
123-065-4370	2-25-05	Repeal	4-1-05	123-070-1500	2-25-05	Amend	4-1-05
123-065-4375	2-25-05	Adopt	4-1-05	123-070-1600	2-25-05	Amend	4-1-05
123-065-4380	2-25-05	Amend	4-1-05	123-070-1700	2-25-05	Amend	4-1-05
123-065-4390	2-25-05	Am. & Ren.	4-1-05	123-070-1800	2-25-05	Amend	4-1-05
123-065-4400	2-25-05	Amend	4-1-05	123-070-1900	2-25-05	Amend	4-1-05
123-065-4410	2-25-05	Amend	4-1-05	123-070-2000	2-25-05	Amend	4-1-05
123-065-4420	2-25-05	Amend	4-1-05	123-070-2100	2-25-05	Amend	4-1-05
123-065-4430	2-25-05	Amend	4-1-05	123-070-2200	2-25-05	Amend	4-1-05
123-065-4440	2-25-05	Amend	4-1-05	123-070-2300	2-25-05	Amend	4-1-05
123-065-4450	2-25-05	Amend	4-1-05	123-070-2400	2-25-05	Amend	4-1-05
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123-065-4470	2-25-05	Amend	4-1-05	125-020-0110	3-1-05	Repeal	3-1-05
123-065-4480	2-25-05	Amend	4-1-05	125-020-0120	3-1-05	Repeal	3-1-05
123-065-4500	2-25-05	Amend	4-1-05	125-020-0130	3-1-05	Repeal	3-1-05
123-065-4510	2-25-05	Amend	4-1-05	125-020-0140	3-1-05	Repeal	3-1-05
123-065-4520	2-25-05	Amend	4-1-05	125-020-0200	3-1-05	Repeal	3-1-05
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125-020-0340	3-1-05	Repeal	3-1-05	125-050-0040	3-1-05	Repeal	3-1-05
125-020-0350	3-1-05	Repeal	3-1-05	125-050-0060	3-1-05	Repeal	3-1-05
125-020-0360	3-1-05	Repeal	3-1-05	125-055-0005	12-28-04	Amend(T)	2-1-05
125-020-0400	3-1-05	Repeal	3-1-05	125-055-0005	6-21-05	Amend	8-1-05
125-020-0410	3-1-05	Repeal	3-1-05	125-055-0005(T)	6-21-05	Repeal	8-1-05
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125-020-0500	3-1-05	Repeal	3-1-05	125-055-0010(T)	6-21-05	Repeal	8-1-05
125-020-0510	3-1-05	Repeal	3-1-05	125-055-0015	12-28-04	Amend(T)	2-1-05
125-020-0520	3-1-05	Repeal	3-1-05	125-055-0015	6-21-05	Amend	8-1-05
125-020-0530	3-1-05	Repeal	3-1-05	125-055-0015(T)	6-21-05	Repeal	8-1-05
125-020-0540	3-1-05	Repeal	3-1-05	125-055-0020	12-28-04	Amend(T)	2-1-05
125-020-0550	3-1-05	Repeal	3-1-05	125-055-0020	6-21-05	Amend	8-1-05
125-020-0600	3-1-05	Repeal	3-1-05	125-055-0020(T)	6-21-05	Repeal	8-1-05
125-020-0610	3-1-05	Repeal	3-1-05	125-055-0025	12-28-04	Amend(T)	2-1-05
125-020-0620	3-1-05	Repeal	3-1-05	125-055-0025	6-21-05	Amend	8-1-05
125-020-0700	3-1-05	Repeal	3-1-05	125-055-0025(T)	6-21-05	Repeal	8-1-05
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125-025-0030	3-1-05	Repeal	3-1-05	125-055-0030(T)	6-21-05	Repeal	8-1-05
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125-025-0050	3-1-05	Repeal	3-1-05	125-055-0035	6-21-05	Amend	8-1-05
125-025-0060	3-1-05	Repeal	3-1-05	125-055-0035(T)	6-21-05	Repeal	8-1-05
125-025-0070	3-1-05	Repeal	3-1-05	125-055-0040	12-28-04	Amend(T)	2-1-05
125-025-0080	3-1-05	Repeal	3-1-05	125-055-0040	6-21-05	Amend	8-1-05
125-025-0082	3-1-05	Repeal	3-1-05	125-055-0040(T)	6-21-05	Repeal	8-1-05
125-025-0085	3-1-05	Repeal	3-1-05	125-055-0045	12-28-04	Amend(T)	2-1-05
125-025-0087	3-1-05	Repeal	3-1-05	125-055-0045	6-21-05	Amend	8-1-05
125-025-0090	3-1-05	Repeal	3-1-05	125-055-0045(T)	6-21-05	Repeal	8-1-05
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125-030-0005	3-1-05	Repeal	3-1-05	125-145-0010	12-1-04	Adopt(T)	1-1-05
125-030-0007	3-1-05	Repeal	3-1-05	125-145-0010	2-24-05	Amend(T)	4-1-05
125-030-0009	3-1-05	Repeal	3-1-05	125-145-0010	5-27-05	Adopt	7-1-05
125-030-0014	3-1-05	Repeal	3-1-05	125-145-0010(T)	2-24-05	Suspend	4-1-05
125-030-0028	3-1-05	Repeal	3-1-05	125-145-0010(T)	5-27-05	Repeal	7-1-05
125-030-0029	3-1-05	Repeal	3-1-05	125-145-0020	12-1-04	Adopt(T)	1-1-05
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125-030-0033	3-1-05	Repeal	3-1-05	125-145-0020	5-27-05	Adopt	7-1-05
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125-030-0080	3-1-05	Repeal	3-1-05	125-145-0030	12-1-04	Adopt(T)	1-1-05
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125-145-0040	2-24-05	Amend(T)	4-1-05	125-246-0320	3-1-05	Adopt	1-1-05
125-145-0040	5-27-05	Adopt	7-1-05	125-246-0321	3-1-05	Adopt	1-1-05
125-145-0040(T)	2-24-05	Suspend	4-1-05	125-246-0322	3-1-05	Adopt	1-1-05
125-145-0040(T)	5-27-05	Repeal	7-1-05	125-246-0323	3-1-05	Adopt	1-1-05
125-145-0045	12-1-04	Adopt(T)	1-1-05	125-246-0324	3-1-05	Adopt	1-1-05
125-145-0045	2-24-05	Amend(T)	4-1-05	125-246-0330	3-1-05	Adopt	1-1-05
125-145-0045	5-27-05	Adopt	7-1-05	125-246-0335	3-1-05	Adopt	1-1-05
125-145-0045(T)	2-24-05	Suspend	4-1-05	125-246-0345	3-1-05	Adopt	1-1-05
125-145-0045(T)	5-27-05	Repeal	7-1-05	125-246-0350	3-1-05	Adopt	1-1-05
125-145-0050	12-1-04	Adopt(T)	1-1-05	125-246-0351	3-1-05	Adopt	1-1-05
125-145-0050	2-24-05	Suspend	4-1-05	125-246-0352	3-1-05	Adopt	1-1-05
125-145-0060	12-1-04	Adopt(T)	1-1-05	125-246-0353	3-1-05	Adopt	1-1-05
125-145-0060	2-24-05	Amend(T)	4-1-05	125-246-0355	3-1-05	Adopt	1-1-05
125-145-0060	5-27-05	Adopt	7-1-05	125-246-0360	3-1-05	Adopt	1-1-05
125-145-0060(T)	2-24-05	Suspend	4-1-05	125-246-0400	3-1-05	Adopt	1-1-05
125-145-0060(T)	5-27-05	Repeal	7-1-05	125-246-0410	3-1-05	Adopt	1-1-05
125-145-0080	12-1-04	Adopt(T)	1-1-05	125-246-0420	3-1-05	Adopt	1-1-05
125-145-0080	2-24-05	Amend(T)	4-1-05	125-246-0430	3-1-05	Adopt	1-1-05
125-145-0080	5-27-05	Adopt	7-1-05	125-246-0440	3-1-05	Adopt	1-1-05
125-145-0080(T)	2-24-05	Suspend	4-1-05	125-246-0450	3-1-05	Adopt	1-1-05
125-145-0080(T)	5-27-05	Repeal	7-1-05	125-246-0460	3-1-05	Adopt	1-1-05
125-145-0090	12-1-04	Adopt(T)	1-1-05	125-246-0470	3-1-05	Adopt	1-1-05
125-145-0090	2-24-05	Amend(T)	4-1-05	125-246-0500	3-1-05	Adopt	1-1-05
125-145-0090	5-27-05	Adopt	7-1-05	125-246-0550	3-1-05	Adopt	1-1-05
125-145-0090(T)	2-24-05	Suspend	4-1-05	125-246-0555	3-1-05	Adopt	1-1-05
125-145-0090(T)	5-27-05	Repeal	7-1-05	125-246-0560	3-1-05	Adopt	1-1-05
125-145-0100	12-1-04	Adopt(T)	1-1-05	125-246-0560	6-6-05	Amend	5-1-05
125-145-0100	2-24-05	Amend(T)	4-1-05	125-246-0560	6-6-05	Amend	7-1-05
125-145-0100	5-27-05	Adopt	7-1-05	125-246-0570	3-1-05	Adopt	1-1-05
125-145-0100(T)	2-24-05	Suspend	4-1-05	125-246-0575	3-1-05	Adopt	1-1-05
125-145-0100(T)	5-27-05	Repeal	7-1-05	125-246-0580	3-1-05	Adopt	1-1-05
125-145-0105	12-1-04	Adopt(T)	1-1-05	125-246-0600	3-1-05	Adopt	1-1-05
125-145-0105	2-24-05	Amend(T)	4-1-05	125-246-0605	3-1-05	Adopt	1-1-05
125-145-0105	5-27-05	Adopt	7-1-05	125-246-0610	3-1-05	Adopt	1-1-05
125-145-0105(T)	2-24-05	Suspend	4-1-05	125-246-0615	3-1-05	Adopt	1-1-05
125-145-0105(T)	5-27-05	Repeal	7-1-05	125-246-0620	3-1-05	Adopt	1-1-05
125-145-0110	12-1-04	Adopt(T)	1-1-05	125-246-0625	3-1-05	Adopt	1-1-05
125-145-0110	2-24-05	Suspend	4-1-05	125-246-0630	3-1-05	Adopt	1-1-05
125-145-0120	12-1-04	Adopt(T)	1-1-05	125-246-0635	3-1-05	Adopt	1-1-05
125-145-0120	2-24-05	Suspend	4-1-05	125-246-0700	3-1-05	Adopt	1-1-05
125-145-0130	2-24-05	Adopt(T)	4-1-05	125-246-0710	3-1-05	Adopt	1-1-05
125-145-0130(T)	5-27-05	Repeal	7-1-05	125-246-0720	3-1-05	Adopt	1-1-05
125-246-0100	3-1-05	Adopt	1-1-05	125-246-0730	3-1-05	Adopt	1-1-05
125-246-0100	6-6-05	Amend	5-1-05	125-246-0800	3-1-05	Adopt	1-1-05
125-246-0100	6-6-05	Amend	7-1-05	125-246-0900	3-1-05	Adopt	1-1-05
125-246-0110	3-1-05	Adopt	1-1-05	125-247-0005	3-1-05	Adopt	1-1-05
125-246-0120	3-1-05	Adopt	1-1-05	125-247-0010	3-1-05	Adopt	1-1-05
125-246-0130	3-1-05	Adopt	1-1-05	125-247-0100	3-1-05	Adopt	1-1-05
125-246-0140	3-1-05	Adopt	1-1-05	125-247-0165	3-1-05	Adopt	1-1-05
125-246-0150	3-1-05	Adopt	1-1-05	125-247-0170	3-1-05	Adopt	1-1-05
125-246-0170	3-1-05	Adopt	1-1-05	125-247-0200	3-1-05	Adopt	1-1-05
125-246-0200	3-1-05	Adopt	1-1-05	125-247-0255	3-1-05	Adopt	1-1-05
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125-249-0860	3-1-05	Adopt	1-1-05	137-009-0140	3-18-05	Adopt(T)	5-1-05
125-249-0870	3-1-05	Adopt	1-1-05	137-009-0145	3-18-05	Adopt(T)	5-1-05
125-249-0880	3-1-05	Adopt	1-1-05	137-009-0150	3-18-05	Adopt(T)	5-1-05
125-249-0890	3-1-05	Adopt	1-1-05	137-009-0155	3-18-05	Adopt(T)	5-1-05
125-249-0900	3-1-05	Adopt	1-1-05	137-009-0160	3-18-05	Adopt(T)	5-1-05
125-249-0910	3-1-05	Adopt	1-1-05	137-009-0165	3-18-05	Adopt(T)	5-1-05
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125-300-0010	3-1-05	Repeal	3-1-05	137-055-1100	4-1-05	Amend	5-1-05
125-300-0050	3-1-05	Repeal	3-1-05	137-055-1120	4-1-05	Amend	5-1-05
125-300-0100	3-1-05	Repeal	3-1-05	137-055-1180	7-15-05	Amend	8-1-05
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125-310-0010	3-1-05	Repeal	3-1-05	137-055-1700	7-15-05	Adopt	8-1-05
125-310-0012	3-1-05	Repeal	3-1-05	137-055-2140	1-3-05	Amend	2-1-05
125-310-0030	3-1-05	Repeal	3-1-05	137-055-2140	7-15-05	Amend	8-1-05
125-310-0035	3-1-05	Repeal	3-1-05	137-055-2165	1-3-05	Adopt	2-1-05
125-310-0040	3-1-05	Repeal	3-1-05	137-055-3400	7-15-05	Amend	8-1-05
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125-310-0135	3-1-05	Repeal	3-1-05	137-055-4130	1-3-05	Amend	2-1-05
125-310-0180	3-1-05	Repeal	3-1-05	137-055-4130	7-15-05	Amend	8-1-05
125-310-0200	3-1-05	Repeal	3-1-05	137-055-4340	4-1-05	Amend	5-1-05
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125-310-0500	3-1-05	Repeal	3-1-05	137-055-5120	4-1-05	Amend	5-1-05
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125-330-0500	3-1-05	Repeal	3-1-05	137-076-0025	11-22-04	Amend	1-1-05
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125-360-0020	3-1-05	Repeal	3-1-05	137-086-0020	11-22-04	Adopt	1-1-05
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141-073-0155	2-28-05	Repeal	3-1-05	150-309.100(3)-(B)	12-31-04	Amend	2-1-05
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141-073-0250	2-28-05	Am. & Ren.	3-1-05	150-314.670-(A)	12-31-04	Adopt	2-1-05
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291-047-0010	7-7-05	Amend(T)	8-1-05	291-180-0072	2-24-05	Repeal	4-1-05
291-047-0020	7-7-05	Suspend	8-1-05	291-180-0073	2-24-05	Repeal	4-1-05
291-047-0021	7-7-05	Adopt(T)	8-1-05	291-180-0075	2-24-05	Repeal	4-1-05
291-047-0025	7-7-05	Suspend	8-1-05	291-180-0080	2-24-05	Repeal	4-1-05
291-082-0010	1-7-05	Amend(T)	2-1-05	291-180-0085	2-24-05	Repeal	4-1-05
291-082-0020	1-7-05	Amend(T)	2-1-05	291-180-0090	2-24-05	Repeal	4-1-05
291-082-0030	1-7-05	Amend(T)	2-1-05	291-180-0095	2-24-05	Repeal	4-1-05
291-082-0031	1-7-05	Adopt(T)	2-1-05	291-180-0106	2-24-05	Adopt	4-1-05
291-082-0032	1-7-05	Adopt(T)	2-1-05	291-180-0115	2-24-05	Adopt	4-1-05
291-082-0033	1-7-05	Adopt(T)	2-1-05	291-180-0125	2-24-05	Adopt	4-1-05
291-086-0010	3-21-05	Amend	5-1-05	291-180-0135	2-24-05	Adopt	4-1-05
291-086-0020	3-21-05	Amend	5-1-05	291-180-0145	2-24-05	Adopt	4-1-05
291-086-0030	3-21-05	Amend	5-1-05	291-180-0155	2-24-05	Adopt	4-1-05
291-086-0040	3-21-05	Amend	5-1-05	291-180-0165	2-24-05	Adopt	4-1-05
291-086-0045	3-21-05	Amend	5-1-05	291-180-0175	2-24-05	Adopt	4-1-05
291-086-0046	3-21-05	Adopt	5-1-05	291-180-0185	2-24-05	Adopt	4-1-05
291-086-0047	3-21-05	Adopt	5-1-05	291-180-0195	2-24-05	Adopt	4-1-05
291-086-0050	3-21-05	Amend	5-1-05	291-180-0205	2-24-05	Adopt	4-1-05
291-086-0060	3-21-05	Adopt	5-1-05	291-180-0215	2-24-05	Adopt	4-1-05
291-100-0005	4-13-05	Amend	5-1-05	291-180-0225	2-24-05	Adopt	4-1-05
291-100-0008	4-13-05	Amend	5-1-05	291-180-0235	2-24-05	Adopt	4-1-05
291-100-0013	4-13-05	Amend	5-1-05	291-180-0245	2-24-05	Adopt	4-1-05
291-100-0070	4-13-05	Amend	5-1-05	291-180-0255	2-24-05	Adopt	4-1-05
291-100-0080	4-13-05	Amend	5-1-05	291-180-0265	2-24-05	Adopt	4-1-05
291-100-0085	4-13-05	Adopt	5-1-05	291-180-0275	2-24-05	Adopt	4-1-05
291-100-0090	4-13-05	Amend	5-1-05	291-180-0285	2-24-05	Adopt	4-1-05
291-100-0100	4-13-05	Amend	5-1-05	291-180-0295	2-24-05	Adopt	4-1-05
291-100-0105	4-13-05	Adopt	5-1-05	291-180-0305	2-24-05	Adopt	4-1-05
291-100-0110	4-13-05	Amend	5-1-05	291-180-0315	2-24-05	Adopt	4-1-05
291-100-0115	4-13-05	Adopt	5-1-05	291-180-0325	2-24-05	Adopt	4-1-05
291-100-0120	4-13-05	Amend	5-1-05	291-180-0335	2-24-05	Adopt	4-1-05
291-100-0130	4-13-05	Amend	5-1-05	291-180-0345	2-24-05	Adopt	4-1-05
291-100-0140	4-13-05	Amend	5-1-05	291-180-0355	2-24-05	Adopt	4-1-05
291-100-0150	4-13-05	Amend	5-1-05	291-180-0365	2-24-05	Adopt	4-1-05
291-100-0160	4-13-05	Adopt	5-1-05	291-180-0375	2-24-05	Adopt	4-1-05
291-127-0200	3-14-05	Amend	4-1-05	291-180-0385	2-24-05	Adopt	4-1-05
291-127-0210	3-14-05	Amend	4-1-05	291-180-0395	2-24-05	Adopt	4-1-05
291-127-0220	3-14-05	Amend	4-1-05	291-180-0405	2-24-05	Adopt	4-1-05
291-127-0230	3-14-05	Amend	4-1-05	291-180-0415	2-24-05	Adopt	4-1-05
291-127-0240	3-14-05	Amend	4-1-05	291-180-0425	2-24-05	Adopt	4-1-05
291-127-0250	3-14-05	Amend	4-1-05	291-180-0435	2-24-05	Adopt	4-1-05

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291-180-0455	2-24-05	Adopt	4-1-05	309-032-1305	7-1-05	Adopt	8-1-05
291-180-0465	2-24-05	Adopt	4-1-05	309-035-0100	4-1-05	Amend	5-1-05
291-180-0475	2-24-05	Adopt	4-1-05	309-035-0105	4-1-05	Amend	5-1-05
291-180-0485	2-24-05	Adopt	4-1-05	309-035-0110	4-1-05	Amend	5-1-05
291-180-0495	2-24-05	Adopt	4-1-05	309-035-0113	4-1-05	Amend	5-1-05
291-180-0505	2-24-05	Adopt	4-1-05	309-035-0115	4-1-05	Amend	5-1-05
291-180-0515	2-24-05	Adopt	4-1-05	309-035-0117	4-1-05	Amend	5-1-05
291-180-0525	2-24-05	Adopt	4-1-05	309-035-0120	4-1-05	Amend	5-1-05
291-180-0535	2-24-05	Adopt	4-1-05	309-035-0125	4-1-05	Amend	5-1-05
291-180-0545	2-24-05	Adopt	4-1-05	309-035-0130	4-1-05	Amend	5-1-05
291-180-0555	2-24-05	Adopt	4-1-05	309-035-0135	4-1-05	Amend	5-1-05
291-180-0565	2-24-05	Adopt	4-1-05	309-035-0140	4-1-05	Amend	5-1-05
291-180-0575	2-24-05	Adopt	4-1-05	309-035-0145	4-1-05	Amend	5-1-05
291-180-0585	2-24-05	Adopt	4-1-05	309-035-0150	4-1-05	Amend	5-1-05
291-180-0595	2-24-05	Adopt	4-1-05	309-035-0155	4-1-05	Amend	5-1-05
291-180-0605	2-24-05	Adopt	4-1-05	309-035-0157	4-1-05	Amend	5-1-05
291-180-0615	2-24-05	Adopt	4-1-05	309-035-0159	4-1-05	Amend	5-1-05
291-180-0625	2-24-05	Adopt	4-1-05	309-035-0165	4-1-05	Amend	5-1-05
291-180-0635	2-24-05	Adopt	4-1-05	309-035-0167	4-1-05	Amend	5-1-05
291-180-0645	2-24-05	Adopt	4-1-05	309-035-0170	4-1-05	Amend	5-1-05
291-180-0655	2-24-05	Adopt	4-1-05	309-035-0175	4-1-05	Amend	5-1-05
291-180-0665	2-24-05	Adopt	4-1-05	309-035-0185	4-1-05	Amend	5-1-05
309-018-0000	3-29-05	Repeal	5-1-05	309-035-0190	4-1-05	Amend	5-1-05
309-018-0010	3-29-05	Repeal	5-1-05	309-035-0250	4-1-05	Amend	5-1-05
309-018-0020	3-29-05	Repeal	5-1-05	309-035-0260	4-1-05	Amend	5-1-05
309-018-0030	3-29-05	Repeal	5-1-05	309-035-0270	4-1-05	Amend	5-1-05
309-018-0040	3-29-05	Repeal	5-1-05	309-035-0280	4-1-05	Amend	5-1-05
309-018-0050	3-29-05	Repeal	5-1-05	309-035-0290	4-1-05	Amend	5-1-05
309-018-0060	3-29-05	Repeal	5-1-05	309-035-0300	4-1-05	Amend	5-1-05
309-032-1240	1-3-05	Adopt(T)	2-1-05	309-035-0310	4-1-05	Amend	5-1-05
309-032-1240	7-1-05	Adopt	8-1-05	309-035-0320	4-1-05	Amend	5-1-05
309-032-1245	1-3-05	Adopt(T)	2-1-05	309-035-0330	4-1-05	Amend	5-1-05
309-032-1245	7-1-05	Adopt	8-1-05	309-035-0340	4-1-05	Amend	5-1-05
309-032-1250	1-3-05	Adopt(T)	2-1-05	309-035-0350	4-1-05	Amend	5-1-05
309-032-1250	7-1-05	Adopt	8-1-05	309-035-0360	4-1-05	Amend	5-1-05
309-032-1255	1-3-05	Adopt(T)	2-1-05	309-035-0370	4-1-05	Amend	5-1-05
309-032-1255	7-1-05	Adopt	8-1-05	309-035-0380	4-1-05	Amend	5-1-05
309-032-1260	1-3-05	Adopt(T)	2-1-05	309-035-0390	4-1-05	Amend	5-1-05
309-032-1260	7-1-05	Adopt	8-1-05	309-035-0400	4-1-05	Amend	5-1-05
309-032-1265	1-3-05	Adopt(T)	2-1-05	309-035-0410	4-1-05	Amend	5-1-05
309-032-1265	7-1-05	Adopt	8-1-05	309-035-0420	4-1-05	Amend	5-1-05
309-032-1270	1-3-05	Adopt(T)	2-1-05	309-035-0430	4-1-05	Amend	5-1-05
309-032-1270	7-1-05	Adopt	8-1-05	309-035-0440	4-1-05	Amend	5-1-05
309-032-1275	1-3-05	Adopt(T)	2-1-05	309-035-0450	4-1-05	Amend	5-1-05
309-032-1275	7-1-05	Adopt	8-1-05	309-035-0460	4-1-05	Amend	5-1-05
309-032-1280	1-3-05	Adopt(T)	2-1-05	309-040-0000	4-1-05	Am. & Ren.	5-1-05
309-032-1280	7-1-05	Adopt	8-1-05	309-040-0005	4-1-05	Am. & Ren.	5-1-05
309-032-1285	1-3-05	Adopt(T)	2-1-05	309-040-0010	4-1-05	Am. & Ren.	5-1-05
309-032-1285	7-1-05	Adopt	8-1-05	309-040-0011	4-1-05	Am. & Ren.	5-1-05
309-032-1290	1-3-05	Adopt(T)	2-1-05	309-040-0012	4-1-05	Am. & Ren.	5-1-05
309-032-1290	7-1-05	Adopt	8-1-05	309-040-0015	4-1-05	Am. & Ren.	5-1-05
309-032-1295	1-3-05	Adopt(T)	2-1-05	309-040-0020	4-1-05	Am. & Ren.	5-1-05
309-032-1295	7-1-05	Adopt	8-1-05	309-040-0025	4-1-05	Am. & Ren.	5-1-05
309-032-1300	1-3-05	Adopt(T)	2-1-05	309-040-0030	4-1-05	Am. & Ren.	5-1-05
309-032-1300	7-1-05	Adopt	8-1-05	309-040-0035	4-1-05	Am. & Ren.	5-1-05



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309-040-0045	4-1-05	Am. & Ren.	5-1-05	330-105-0040	12-20-04	Amend	2-1-05
309-040-0050	4-1-05	Am. & Ren.	5-1-05	330-105-0045	12-20-04	Amend	2-1-05
309-040-0052	4-1-05	Am. & Ren.	5-1-05	330-110-0005	12-20-04	Amend	2-1-05
309-040-0055	4-1-05	Am. & Ren.	5-1-05	330-110-0010	12-20-04	Amend	2-1-05
309-040-0057	4-1-05	Am. & Ren.	5-1-05	330-110-0015	12-20-04	Amend	2-1-05
309-040-0060	4-1-05	Am. & Ren.	5-1-05	330-110-0016	12-20-04	Amend	2-1-05
309-040-0065	4-1-05	Am. & Ren.	5-1-05	330-110-0020	12-20-04	Amend	2-1-05
309-040-0070	4-1-05	Am. & Ren.	5-1-05	330-110-0025	12-20-04	Amend	2-1-05
309-040-0075	4-1-05	Am. & Ren.	5-1-05	330-110-0030	12-20-04	Amend	2-1-05
309-040-0090	4-1-05	Am. & Ren.	5-1-05	330-110-0035	12-20-04	Amend	2-1-05
309-040-0092	4-1-05	Am. & Ren.	5-1-05	330-110-0036	12-20-04	Amend	2-1-05
309-040-0093	4-1-05	Am. & Ren.	5-1-05	330-110-0040	12-20-04	Amend	2-1-05
309-040-0095	4-1-05	Am. & Ren.	5-1-05	330-110-0042	12-20-04	Amend	2-1-05
309-040-0097	4-1-05	Am. & Ren.	5-1-05	330-110-0045	12-20-04	Amend	2-1-05
309-040-0098	4-1-05	Am. & Ren.	5-1-05	330-110-0050	12-20-04	Amend	2-1-05
309-040-0099	4-1-05	Am. & Ren.	5-1-05	330-110-0055	12-20-04	Amend	2-1-05
309-040-0100	4-1-05	Am. & Ren.	5-1-05	331-710-0010	3-1-05	Amend	4-1-05
309-040-0370	4-1-05	Adopt	5-1-05	331-715-0010	3-1-05	Amend	4-1-05
309-040-0375	4-1-05	Adopt	5-1-05	331-720-0010	3-1-05	Amend	4-1-05
309-040-0380	4-1-05	Adopt	5-1-05	333-004-0000	2-18-05	Adopt	4-1-05
309-040-0385	4-1-05	Adopt	5-1-05	333-004-0010	2-18-05	Adopt	4-1-05
309-046-0100	1-1-05	Am. & Ren.	1-1-05	333-004-0020	2-18-05	Adopt	4-1-05
309-046-0110	1-1-05	Am. & Ren.	1-1-05	333-004-0030	2-18-05	Adopt	4-1-05
309-046-0120	1-1-05	Am. & Ren.	1-1-05	333-004-0040	2-18-05	Adopt	4-1-05
309-046-0130	1-1-05	Am. & Ren.	1-1-05	333-004-0050	2-18-05	Adopt	4-1-05
309-046-0140	1-1-05	Am. & Ren.	1-1-05	333-004-0060	2-18-05	Adopt	4-1-05
309-046-0150	1-1-05	Am. & Ren.	1-1-05	333-004-0070	2-18-05	Adopt	4-1-05
309-046-0160	1-1-05	Am. & Ren.	1-1-05	333-004-0080	2-18-05	Adopt	4-1-05
309-046-0170	1-1-05	Am. & Ren.	1-1-05	333-004-0090	2-18-05	Adopt	4-1-05
309-046-0180	1-1-05	Am. & Ren.	1-1-05	333-004-0100	2-18-05	Adopt	4-1-05
309-046-0190	1-1-05	Am. & Ren.	1-1-05	333-004-0110	2-18-05	Adopt	4-1-05
309-046-0200	1-1-05	Am. & Ren.	1-1-05	333-004-0120	2-18-05	Adopt	4-1-05
309-046-0210	1-1-05	Am. & Ren.	1-1-05	333-004-0130	2-18-05	Adopt	4-1-05
309-046-0220	1-1-05	Am. & Ren.	1-1-05	333-004-0140	2-18-05	Adopt	4-1-05
309-046-0230	1-1-05	Repeal	1-1-05	333-004-0150	2-18-05	Adopt	4-1-05
309-046-0240	1-1-05	Am. & Ren.	1-1-05	333-004-0160	2-18-05	Adopt	4-1-05
309-120-0000	7-7-05	Amend(T)	8-1-05	333-004-0170	2-18-05	Adopt	4-1-05
309-120-0005	7-7-05	Amend(T)	8-1-05	333-004-0180	2-18-05	Adopt	4-1-05
309-120-0015	7-7-05	Suspend	8-1-05	333-004-0190	2-18-05	Adopt	4-1-05
309-120-0020	7-7-05	Suspend	8-1-05	333-008-0020	1-1-05	Amend	2-1-05
309-120-0021	7-7-05	Adopt(T)	8-1-05	333-012-0250	6-21-05	Amend	7-1-05
309-120-0070	7-15-05	Adopt(T)	8-1-05	333-017-0000	7-5-05	Amend	8-1-05
309-120-0075	7-15-05	Adopt(T)	8-1-05	333-018-0005	7-5-05	Amend	8-1-05
309-120-0080	7-15-05	Adopt(T)	8-1-05	333-018-0010	7-5-05	Amend	8-1-05
325-001-0005	6-8-05	Adopt	7-1-05	333-018-0015	7-5-05	Amend	8-1-05
325-005-0010	7-1-05	Adopt(T)	7-1-05	333-018-0018	7-5-05	Amend	8-1-05
330-100-0000	12-20-04	Amend	2-1-05	333-019-0002	7-5-05	Amend	8-1-05
330-100-0005	12-20-04	Amend	2-1-05	333-019-0005	7-5-05	Amend	8-1-05
330-105-0005	12-20-04	Amend	2-1-05	333-019-0010	7-5-05	Amend	8-1-05
330-105-0007	12-20-04	Amend	2-1-05	333-019-0015	7-5-05	Repeal	8-1-05
330-105-0008	12-20-04	Amend	2-1-05	333-019-0017	7-5-05	Amend	8-1-05
330-105-0015	12-20-04	Amend	2-1-05	333-019-0041	6-21-05	Amend	7-1-05
330-105-0020	12-20-04	Amend	2-1-05	333-024-0210	12-7-04	Amend	1-1-05
330-105-0025	12-20-04	Amend	2-1-05	333-024-0210(T)	12-7-04	Repeal	1-1-05
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333-024-0220	12-7-04	Amend	1-1-05	333-050-0141(T)	2-3-05	Repeal	3-1-05
333-024-0220(T)	12-7-04	Repeal	1-1-05	333-054-0010	5-2-05	Amend(T)	6-1-05
333-024-0225	12-7-04	Amend	1-1-05	333-054-0020	5-2-05	Amend(T)	6-1-05
333-024-0225(T)	12-7-04	Repeal	1-1-05	333-054-0030	5-2-05	Amend(T)	6-1-05
333-024-0230	12-7-04	Amend	1-1-05	333-054-0050	5-2-05	Amend(T)	6-1-05
333-024-0230(T)	12-7-04	Repeal	1-1-05	333-054-0060	5-2-05	Amend(T)	6-1-05
333-024-0231	12-7-04	Amend	1-1-05	333-054-0100	5-2-05	Amend(T)	6-1-05
333-024-0231(T)	12-7-04	Repeal	1-1-05	333-064-0025	7-1-05	Amend	7-1-05
333-024-0232	12-7-04	Amend	1-1-05	333-064-0035	7-1-05	Amend	7-1-05
333-024-0232(T)	12-7-04	Repeal	1-1-05	333-064-0070	7-1-05	Amend	7-1-05
333-024-0235	12-7-04	Amend	1-1-05	333-100-0001	12-1-04	Amend	1-1-05
333-024-0235(T)	12-7-04	Repeal	1-1-05	333-100-0001(T)	12-1-04	Repeal	1-1-05
333-024-0240	12-7-04	Amend	1-1-05	333-100-0005	12-1-04	Amend	1-1-05
333-024-0240(T)	12-7-04	Repeal	1-1-05	333-100-0005(T)	12-1-04	Repeal	1-1-05
333-024-0241	12-7-04	Adopt	1-1-05	333-100-0057	12-1-04	Adopt	1-1-05
333-024-0241(T)	12-7-04	Repeal	1-1-05	333-100-0057(T)	12-1-04	Repeal	1-1-05
333-029-0015	1-14-05	Amend	2-1-05	333-100-0060	12-1-04	Amend	1-1-05
333-029-0050	1-14-05	Amend	2-1-05	333-100-0060(T)	12-1-04	Repeal	1-1-05
333-029-0075	1-14-05	Amend	2-1-05	333-100-0065	12-1-04	Amend	1-1-05
333-030-0015	1-14-05	Amend	2-1-05	333-100-0065(T)	12-1-04	Repeal	1-1-05
333-030-0040	1-14-05	Amend	2-1-05	333-100-0070	12-1-04	Amend	1-1-05
333-030-0045	1-14-05	Amend	2-1-05	333-100-0070(T)	12-1-04	Repeal	1-1-05
333-030-0050	1-14-05	Amend	2-1-05	333-100-0080	12-1-04	Adopt	1-1-05
333-030-0080	1-14-05	Amend	2-1-05	333-100-0080(T)	12-1-04	Repeal	1-1-05
333-030-0085	1-14-05	Amend	2-1-05	333-101-0001	12-1-04	Amend	1-1-05
333-030-0120	1-14-05	Amend	2-1-05	333-101-0001(T)	12-1-04	Repeal	1-1-05
333-031-0002	1-14-05	Amend	2-1-05	333-101-0003	12-1-04	Adopt	1-1-05
333-031-0004	1-14-05	Amend	2-1-05	333-101-0003(T)	12-1-04	Repeal	1-1-05
333-031-0006	1-14-05	Amend	2-1-05	333-101-0010	12-1-04	Amend	1-1-05
333-031-0010	1-14-05	Amend	2-1-05	333-101-0010(T)	12-1-04	Repeal	1-1-05
333-031-0012	1-14-05	Amend	2-1-05	333-101-0020	4-11-05	Amend	5-1-05
333-031-0018	1-14-05	Amend	2-1-05	333-102-0001	12-1-04	Amend	1-1-05
333-031-0066	1-14-05	Amend	2-1-05	333-102-0001(T)	12-1-04	Repeal	1-1-05
333-049-0065	4-13-05	Adopt	5-1-05	333-102-0005	12-1-04	Amend	1-1-05
333-050-0010	2-3-05	Amend	3-1-05	333-102-0005(T)	12-1-04	Repeal	1-1-05
333-050-0010(T)	2-3-05	Repeal	3-1-05	333-102-0010	12-1-04	Amend	1-1-05
333-050-0020	2-3-05	Amend	3-1-05	333-102-0010(T)	12-1-04	Repeal	1-1-05
333-050-0020(T)	2-3-05	Repeal	3-1-05	333-102-0015	12-1-04	Amend	1-1-05
333-050-0030	2-3-05	Amend	3-1-05	333-102-0015(T)	12-1-04	Repeal	1-1-05
333-050-0030(T)	2-3-05	Repeal	3-1-05	333-102-0020	12-1-04	Amend	1-1-05
333-050-0040	2-3-05	Amend	3-1-05	333-102-0020(T)	12-1-04	Repeal	1-1-05
333-050-0040(T)	2-3-05	Repeal	3-1-05	333-102-0025	12-1-04	Amend	1-1-05
333-050-0050	2-3-05	Amend	3-1-05	333-102-0025(T)	12-1-04	Repeal	1-1-05
333-050-0050(T)	2-3-05	Repeal	3-1-05	333-102-0030	12-1-04	Amend	1-1-05
333-050-0060	2-3-05	Amend	3-1-05	333-102-0030(T)	12-1-04	Repeal	1-1-05
333-050-0060(T)	2-3-05	Repeal	3-1-05	333-102-0035	12-1-04	Amend	1-1-05
333-050-0080	2-3-05	Amend	3-1-05	333-102-0035(T)	12-1-04	Repeal	1-1-05
333-050-0080(T)	2-3-05	Repeal	3-1-05	333-102-0040	12-1-04	Adopt	1-1-05
333-050-0090	2-3-05	Amend	3-1-05	333-102-0040(T)	12-1-04	Repeal	1-1-05
333-050-0090(T)	2-3-05	Repeal	3-1-05	333-102-0075	12-1-04	Amend	1-1-05
333-050-0100	2-3-05	Amend	3-1-05	333-102-0075(T)	12-1-04	Repeal	1-1-05
333-050-0100(T)	2-3-05	Repeal	3-1-05	333-102-0101	12-1-04	Amend	1-1-05
333-050-0130	2-3-05	Amend	3-1-05	333-102-0101(T)	12-1-04	Repeal	1-1-05
333-050-0130(T)	2-3-05	Repeal	3-1-05	333-102-0103	12-1-04	Amend	1-1-05
333-050-0140	2-3-05	Amend	3-1-05	333-102-0103(T)	12-1-04	Repeal	1-1-05

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333-102-0105	12-1-04	Amend	1-1-05	333-102-0330	12-1-04	Amend	1-1-05
333-102-0105(T)	12-1-04	Repeal	1-1-05	333-102-0330(T)	12-1-04	Repeal	1-1-05
333-102-0110	12-1-04	Amend	1-1-05	333-102-0335	12-1-04	Amend	1-1-05
333-102-0110(T)	12-1-04	Repeal	1-1-05	333-102-0335(T)	12-1-04	Repeal	1-1-05
333-102-0120	12-1-04	Amend	1-1-05	333-102-0340	12-1-04	Amend	1-1-05
333-102-0120(T)	12-1-04	Repeal	1-1-05	333-102-0340(T)	12-1-04	Repeal	1-1-05
333-102-0125	12-1-04	Amend	1-1-05	333-102-0350	12-1-04	Adopt	1-1-05
333-102-0125(T)	12-1-04	Repeal	1-1-05	333-102-0350(T)	12-1-04	Repeal	1-1-05
333-102-0130	12-1-04	Amend	1-1-05	333-102-0355	12-1-04	Adopt	1-1-05
333-102-0130(T)	12-1-04	Repeal	1-1-05	333-102-0355(T)	12-1-04	Repeal	1-1-05
333-102-0135	12-1-04	Amend	1-1-05	333-102-0360	12-1-04	Adopt	1-1-05
333-102-0135(T)	12-1-04	Repeal	1-1-05	333-102-0360(T)	12-1-04	Repeal	1-1-05
333-102-0190	12-1-04	Adopt	1-1-05	333-102-0365	12-1-04	Adopt	1-1-05
333-102-0190(T)	12-1-04	Repeal	1-1-05	333-102-0365(T)	12-1-04	Repeal	1-1-05
333-102-0200	12-1-04	Amend	1-1-05	333-103-0015	12-1-04	Amend	1-1-05
333-102-0200(T)	12-1-04	Repeal	1-1-05	333-103-0015(T)	12-1-04	Repeal	1-1-05
333-102-0203	12-1-04	Amend	1-1-05	333-105-0001	12-1-04	Amend	1-1-05
333-102-0203(T)	12-1-04	Repeal	1-1-05	333-105-0001(T)	12-1-04	Repeal	1-1-05
333-102-0225	12-1-04	Repeal	1-1-05	333-105-0003	12-1-04	Adopt	1-1-05
333-102-0235	12-1-04	Amend	1-1-05	333-105-0003(T)	12-1-04	Repeal	1-1-05
333-102-0235(T)	12-1-04	Repeal	1-1-05	333-105-0005	12-1-04	Amend	1-1-05
333-102-0240	12-1-04	Repeal	1-1-05	333-105-0005(T)	12-1-04	Repeal	1-1-05
333-102-0245	12-1-04	Amend	1-1-05	333-105-0050	12-1-04	Adopt	1-1-05
333-102-0245(T)	12-1-04	Repeal	1-1-05	333-105-0050(T)	12-1-04	Repeal	1-1-05
333-102-0247	12-1-04	Adopt	1-1-05	333-105-0075	12-1-04	Adopt	1-1-05
333-102-0247(T)	12-1-04	Repeal	1-1-05	333-105-0075(T)	12-1-04	Repeal	1-1-05
333-102-0250	12-1-04	Amend	1-1-05	333-105-0101	12-1-04	Repeal	1-1-05
333-102-0250(T)	12-1-04	Repeal	1-1-05	333-105-0105	12-1-04	Repeal	1-1-05
333-102-0255	12-1-04	Amend	1-1-05	333-105-0110	12-1-04	Repeal	1-1-05
333-102-0255(T)	12-1-04	Repeal	1-1-05	333-105-0115	12-1-04	Repeal	1-1-05
333-102-0260	12-1-04	Amend	1-1-05	333-105-0120	12-1-04	Repeal	1-1-05
333-102-0260(T)	12-1-04	Repeal	1-1-05	333-105-0125	12-1-04	Repeal	1-1-05
333-102-0265	12-1-04	Amend	1-1-05	333-105-0130	12-1-04	Repeal	1-1-05
333-102-0265(T)	12-1-04	Repeal	1-1-05	333-105-0135	12-1-04	Repeal	1-1-05
333-102-0270	12-1-04	Amend	1-1-05	333-105-0140	12-1-04	Repeal	1-1-05
333-102-0270(T)	12-1-04	Repeal	1-1-05	333-105-0201	12-1-04	Repeal	1-1-05
333-102-0275	12-1-04	Amend	1-1-05	333-105-0202	12-1-04	Repeal	1-1-05
333-102-0275(T)	12-1-04	Repeal	1-1-05	333-105-0205	12-1-04	Repeal	1-1-05
333-102-0285	12-1-04	Amend	1-1-05	333-105-0210	12-1-04	Repeal	1-1-05
333-102-0285(T)	12-1-04	Repeal	1-1-05	333-105-0301	12-1-04	Repeal	1-1-05
333-102-0287	12-1-04	Repeal	1-1-05	333-105-0305	12-1-04	Repeal	1-1-05
333-102-0290	12-1-04	Amend	1-1-05	333-105-0310	12-1-04	Repeal	1-1-05
333-102-0290(T)	12-1-04	Repeal	1-1-05	333-105-0315	12-1-04	Repeal	1-1-05
333-102-0293	12-1-04	Amend	1-1-05	333-105-0320	12-1-04	Repeal	1-1-05
333-102-0293(T)	12-1-04	Repeal	1-1-05	333-105-0325	12-1-04	Repeal	1-1-05
333-102-0295	12-1-04	Repeal	1-1-05	333-105-0330	12-1-04	Repeal	1-1-05
333-102-0300	12-1-04	Amend	1-1-05	333-105-0335	12-1-04	Repeal	1-1-05
333-102-0300(T)	12-1-04	Repeal	1-1-05	333-105-0420	12-1-04	Adopt	1-1-05
333-102-0305	12-1-04	Amend	1-1-05	333-105-0420(T)	12-1-04	Repeal	1-1-05
333-102-0305(T)	12-1-04	Repeal	1-1-05	333-105-0430	12-1-04	Adopt	1-1-05
333-102-0310	12-1-04	Amend	1-1-05	333-105-0430(T)	12-1-04	Repeal	1-1-05
333-102-0310(T)	12-1-04	Repeal	1-1-05	333-105-0440	12-1-04	Adopt	1-1-05
333-102-0315	12-1-04	Amend	1-1-05	333-105-0440(T)	12-1-04	Repeal	1-1-05
333-102-0315(T)	12-1-04	Repeal	1-1-05	333-105-0450	12-1-04	Adopt	1-1-05
333-102-0327	12-1-04	Amend	1-1-05	333-105-0450(T)	12-1-04	Repeal	1-1-05
333-102-0327(T)	12-1-04	Repeal	1-1-05	333-105-0460	12-1-04	Adopt	1-1-05



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333-105-0460(T)	12-1-04	Repeal	1-1-05	333-105-0740(T)	12-1-04	Repeal	1-1-05
333-105-0470	12-1-04	Adopt	1-1-05	333-105-0750	12-1-04	Adopt	1-1-05
333-105-0470(T)	12-1-04	Repeal	1-1-05	333-105-0750(T)	12-1-04	Repeal	1-1-05
333-105-0480	12-1-04	Adopt	1-1-05	333-105-0760	12-1-04	Adopt	1-1-05
333-105-0480(T)	12-1-04	Repeal	1-1-05	333-105-0760(T)	12-1-04	Repeal	1-1-05
333-105-0490	12-1-04	Adopt	1-1-05	333-106-0005	12-1-04	Amend	1-1-05
333-105-0490(T)	12-1-04	Repeal	1-1-05	333-106-0005	4-11-05	Amend	5-1-05
333-105-0500	12-1-04	Adopt	1-1-05	333-106-0005(T)	12-1-04	Repeal	1-1-05
333-105-0500(T)	12-1-04	Repeal	1-1-05	333-106-0035	12-1-04	Amend	1-1-05
333-105-0510	12-1-04	Adopt	1-1-05	333-106-0035(T)	12-1-04	Repeal	1-1-05
333-105-0510(T)	12-1-04	Repeal	1-1-05	333-106-0045	12-1-04	Amend	1-1-05
333-105-0520	12-1-04	Adopt	1-1-05	333-106-0045	4-11-05	Amend	5-1-05
333-105-0520(T)	12-1-04	Repeal	1-1-05	333-106-0045(T)	12-1-04	Repeal	1-1-05
333-105-0530	12-1-04	Adopt	1-1-05	333-106-0055	12-1-04	Amend	1-1-05
333-105-0530(T)	12-1-04	Repeal	1-1-05	333-106-0055	4-11-05	Amend	5-1-05
333-105-0540	12-1-04	Adopt	1-1-05	333-106-0055(T)	12-1-04	Repeal	1-1-05
333-105-0540(T)	12-1-04	Repeal	1-1-05	333-106-0101	12-1-04	Amend	1-1-05
333-105-0550	12-1-04	Adopt	1-1-05	333-106-0101	4-11-05	Amend	5-1-05
333-105-0550(T)	12-1-04	Repeal	1-1-05	333-106-0101(T)	12-1-04	Repeal	1-1-05
333-105-0560	12-1-04	Adopt	1-1-05	333-106-0105	12-1-04	Amend	1-1-05
333-105-0560(T)	12-1-04	Repeal	1-1-05	333-106-0105(T)	12-1-04	Repeal	1-1-05
333-105-0570	12-1-04	Adopt	1-1-05	333-106-0210	12-1-04	Amend	1-1-05
333-105-0570(T)	12-1-04	Repeal	1-1-05	333-106-0210(T)	12-1-04	Repeal	1-1-05
333-105-0580	12-1-04	Adopt	1-1-05	333-106-0220	12-1-04	Amend	1-1-05
333-105-0580(T)	12-1-04	Repeal	1-1-05	333-106-0220(T)	12-1-04	Repeal	1-1-05
333-105-0590	12-1-04	Adopt	1-1-05	333-106-0325	12-1-04	Amend	1-1-05
333-105-0590(T)	12-1-04	Repeal	1-1-05	333-106-0325(T)	12-1-04	Repeal	1-1-05
333-105-0600	12-1-04	Adopt	1-1-05	333-106-0370	4-11-05	Amend	5-1-05
333-105-0600(T)	12-1-04	Repeal	1-1-05	333-106-0512	4-11-05	Amend	5-1-05
333-105-0610	12-1-04	Adopt	1-1-05	333-106-0575	12-1-04	Amend	1-1-05
333-105-0610(T)	12-1-04	Repeal	1-1-05	333-106-0575(T)	12-1-04	Repeal	1-1-05
333-105-0620	12-1-04	Adopt	1-1-05	333-106-0700	12-1-04	Amend	1-1-05
333-105-0620(T)	12-1-04	Repeal	1-1-05	333-106-0700(T)	12-1-04	Repeal	1-1-05
333-105-0630	12-1-04	Adopt	1-1-05	333-106-0710	12-1-04	Amend	1-1-05
333-105-0630(T)	12-1-04	Repeal	1-1-05	333-106-0710	4-11-05	Amend	5-1-05
333-105-0640	12-1-04	Adopt	1-1-05	333-106-0710(T)	12-1-04	Repeal	1-1-05
333-105-0640(T)	12-1-04	Repeal	1-1-05	333-106-0720	12-1-04	Amend	1-1-05
333-105-0650	12-1-04	Adopt	1-1-05	333-106-0720	4-11-05	Amend	5-1-05
333-105-0650(T)	12-1-04	Repeal	1-1-05	333-106-0720(T)	12-1-04	Repeal	1-1-05
333-105-0660	12-1-04	Adopt	1-1-05	333-106-0730	12-1-04	Amend	1-1-05
333-105-0660(T)	12-1-04	Repeal	1-1-05	333-106-0730	4-11-05	Amend	5-1-05
333-105-0670	12-1-04	Adopt	1-1-05	333-106-0730(T)	12-1-04	Repeal	1-1-05
333-105-0670(T)	12-1-04	Repeal	1-1-05	333-106-0750	12-1-04	Adopt	1-1-05
333-105-0680	12-1-04	Adopt	1-1-05	333-106-0750(T)	12-1-04	Repeal	1-1-05
333-105-0680(T)	12-1-04	Repeal	1-1-05	333-111-0010	12-1-04	Amend	1-1-05
333-105-0690	12-1-04	Adopt	1-1-05	333-111-0010(T)	12-1-04	Repeal	1-1-05
333-105-0690(T)	12-1-04	Repeal	1-1-05	333-116-0010	12-1-04	Amend	1-1-05
333-105-0700	12-1-04	Adopt	1-1-05	333-116-0010(T)	12-1-04	Repeal	1-1-05
333-105-0700(T)	12-1-04	Repeal	1-1-05	333-116-0020	12-1-04	Amend	1-1-05
333-105-0710	12-1-04	Adopt	1-1-05	333-116-0020(T)	12-1-04	Repeal	1-1-05
333-105-0710(T)	12-1-04	Repeal	1-1-05	333-116-0025	12-1-04	Adopt	1-1-05
333-105-0720	12-1-04	Adopt	1-1-05	333-116-0025(T)	12-1-04	Repeal	1-1-05
333-105-0720(T)	12-1-04	Repeal	1-1-05	333-116-0035	12-1-04	Adopt	1-1-05
333-105-0730	12-1-04	Adopt	1-1-05	333-116-0035(T)	12-1-04	Repeal	1-1-05
333-105-0730(T)	12-1-04	Repeal	1-1-05	333-116-0040	12-1-04	Amend	1-1-05
333-105-0740	12-1-04	Adopt	1-1-05	333-116-0040(T)	12-1-04	Repeal	1-1-05

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333-116-0050	12-1-04	Amend	1-1-05	333-116-0340	12-1-04	Amend	1-1-05
333-116-0050(T)	12-1-04	Repeal	1-1-05	333-116-0340(T)	12-1-04	Repeal	1-1-05
333-116-0055	12-1-04	Adopt	1-1-05	333-116-0350	12-1-04	Amend	1-1-05
333-116-0055(T)	12-1-04	Repeal	1-1-05	333-116-0350(T)	12-1-04	Repeal	1-1-05
333-116-0057	12-1-04	Adopt	1-1-05	333-116-0360	12-1-04	Amend	1-1-05
333-116-0057(T)	12-1-04	Repeal	1-1-05	333-116-0360(T)	12-1-04	Repeal	1-1-05
333-116-0059	12-1-04	Adopt	1-1-05	333-116-0370	12-1-04	Amend	1-1-05
333-116-0059(T)	12-1-04	Repeal	1-1-05	333-116-0370(T)	12-1-04	Repeal	1-1-05
333-116-0070	12-1-04	Amend	1-1-05	333-116-0380	12-1-04	Amend	1-1-05
333-116-0070(T)	12-1-04	Repeal	1-1-05	333-116-0380(T)	12-1-04	Repeal	1-1-05
333-116-0080	12-1-04	Amend	1-1-05	333-116-0390	12-1-04	Amend	1-1-05
333-116-0080(T)	12-1-04	Repeal	1-1-05	333-116-0390(T)	12-1-04	Repeal	1-1-05
333-116-0090	12-1-04	Amend	1-1-05	333-116-0410	12-1-04	Amend	1-1-05
333-116-0090(T)	12-1-04	Repeal	1-1-05	333-116-0410(T)	12-1-04	Repeal	1-1-05
333-116-0100	12-1-04	Amend	1-1-05	333-116-0420	12-1-04	Amend	1-1-05
333-116-0100(T)	12-1-04	Repeal	1-1-05	333-116-0420(T)	12-1-04	Repeal	1-1-05
333-116-0105	12-1-04	Adopt	1-1-05	333-116-0430	12-1-04	Amend	1-1-05
333-116-0105(T)	12-1-04	Repeal	1-1-05	333-116-0430(T)	12-1-04	Repeal	1-1-05
333-116-0107	12-1-04	Adopt	1-1-05	333-116-0440	12-1-04	Amend	1-1-05
333-116-0107(T)	12-1-04	Repeal	1-1-05	333-116-0440(T)	12-1-04	Repeal	1-1-05
333-116-0120	12-1-04	Amend	1-1-05	333-116-0450	12-1-04	Amend	1-1-05
333-116-0120(T)	12-1-04	Repeal	1-1-05	333-116-0450(T)	12-1-04	Repeal	1-1-05
333-116-0125	12-1-04	Amend	1-1-05	333-116-0460	12-1-04	Amend	1-1-05
333-116-0125(T)	12-1-04	Repeal	1-1-05	333-116-0460(T)	12-1-04	Repeal	1-1-05
333-116-0140	12-1-04	Amend	1-1-05	333-116-0470	12-1-04	Amend	1-1-05
333-116-0140(T)	12-1-04	Repeal	1-1-05	333-116-0470(T)	12-1-04	Repeal	1-1-05
333-116-0150	12-1-04	Amend	1-1-05	333-116-0480	12-1-04	Amend	1-1-05
333-116-0150(T)	12-1-04	Repeal	1-1-05	333-116-0480(T)	12-1-04	Repeal	1-1-05
333-116-0160	12-1-04	Amend	1-1-05	333-116-0490	12-1-04	Amend	1-1-05
333-116-0160(T)	12-1-04	Repeal	1-1-05	333-116-0490	4-11-05	Amend	5-1-05
333-116-0165	12-1-04	Adopt	1-1-05	333-116-0490(T)	12-1-04	Repeal	1-1-05
333-116-0165(T)	12-1-04	Repeal	1-1-05	333-116-0495	12-1-04	Adopt	1-1-05
333-116-0170	12-1-04	Amend	1-1-05	333-116-0495(T)	12-1-04	Repeal	1-1-05
333-116-0170(T)	12-1-04	Repeal	1-1-05	333-116-0510	12-1-04	Repeal	1-1-05
333-116-0180	12-1-04	Amend	1-1-05	333-116-0515	12-1-04	Adopt	1-1-05
333-116-0180(T)	12-1-04	Repeal	1-1-05	333-116-0515(T)	12-1-04	Repeal	1-1-05
333-116-0190	12-1-04	Amend	1-1-05	333-116-0525	12-1-04	Adopt	1-1-05
333-116-0190(T)	12-1-04	Repeal	1-1-05	333-116-0525(T)	12-1-04	Repeal	1-1-05
333-116-0200	12-1-04	Amend	1-1-05	333-116-0530	12-1-04	Amend	1-1-05
333-116-0200(T)	12-1-04	Repeal	1-1-05	333-116-0530(T)	12-1-04	Repeal	1-1-05
333-116-0250	12-1-04	Amend	1-1-05	333-116-0540	12-1-04	Amend	1-1-05
333-116-0250(T)	12-1-04	Repeal	1-1-05	333-116-0540	4-11-05	Amend	5-1-05
333-116-0260	12-1-04	Amend	1-1-05	333-116-0540(T)	12-1-04	Repeal	1-1-05
333-116-0260(T)	12-1-04	Repeal	1-1-05	333-116-0560	12-1-04	Amend	1-1-05
333-116-0265	12-1-04	Adopt	1-1-05	333-116-0560(T)	12-1-04	Repeal	1-1-05
333-116-0265(T)	12-1-04	Repeal	1-1-05	333-116-0570	12-1-04	Amend	1-1-05
333-116-0290	12-1-04	Amend	1-1-05	333-116-0570(T)	12-1-04	Repeal	1-1-05
333-116-0290(T)	12-1-04	Repeal	1-1-05	333-116-0573	12-1-04	Adopt	1-1-05
333-116-0300	12-1-04	Amend	1-1-05	333-116-0573(T)	12-1-04	Repeal	1-1-05
333-116-0300(T)	12-1-04	Repeal	1-1-05	333-116-0577	12-1-04	Adopt	1-1-05
333-116-0310	12-1-04	Amend	1-1-05	333-116-0577(T)	12-1-04	Repeal	1-1-05
333-116-0310(T)	12-1-04	Repeal	1-1-05	333-116-0580	12-1-04	Amend	1-1-05
333-116-0320	12-1-04	Amend	1-1-05	333-116-0580(T)	12-1-04	Repeal	1-1-05
333-116-0320(T)	12-1-04	Repeal	1-1-05	333-116-0583	12-1-04	Adopt	1-1-05
333-116-0330	12-1-04	Amend	1-1-05	333-116-0583(T)	12-1-04	Repeal	1-1-05
333-116-0330(T)	12-1-04	Repeal	1-1-05	333-116-0585	12-1-04	Adopt	1-1-05

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333-116-0587	12-1-04	Adopt	1-1-05	333-118-0140	12-1-04	Amend	1-1-05
333-116-0587(T)	12-1-04	Repeal	1-1-05	333-118-0140(T)	12-1-04	Repeal	1-1-05
333-116-0590	12-1-04	Amend	1-1-05	333-118-0150	12-1-04	Amend	1-1-05
333-116-0590(T)	12-1-04	Repeal	1-1-05	333-118-0150(T)	12-1-04	Repeal	1-1-05
333-116-0600	12-1-04	Amend	1-1-05	333-118-0160	12-1-04	Amend	1-1-05
333-116-0600(T)	12-1-04	Repeal	1-1-05	333-118-0160(T)	12-1-04	Repeal	1-1-05
333-116-0605	12-1-04	Adopt	1-1-05	333-118-0170	12-1-04	Amend	1-1-05
333-116-0605(T)	12-1-04	Repeal	1-1-05	333-118-0170(T)	12-1-04	Repeal	1-1-05
333-116-0610	12-1-04	Amend	1-1-05	333-118-0180	12-1-04	Amend	1-1-05
333-116-0610(T)	12-1-04	Repeal	1-1-05	333-118-0180(T)	12-1-04	Repeal	1-1-05
333-116-0640	12-1-04	Amend	1-1-05	333-118-0190	12-1-04	Amend	1-1-05
333-116-0640(T)	12-1-04	Repeal	1-1-05	333-118-0190(T)	12-1-04	Repeal	1-1-05
333-116-0660	12-1-04	Amend	1-1-05	333-118-0200	12-1-04	Amend	1-1-05
333-116-0660	4-11-05	Amend	5-1-05	333-118-0200(T)	12-1-04	Repeal	1-1-05
333-116-0660(T)	12-1-04	Repeal	1-1-05	333-118-0800	12-1-04	Adopt	1-1-05
333-116-0670	12-1-04	Amend	1-1-05	333-118-0800(T)	12-1-04	Repeal	1-1-05
333-116-0670(T)	12-1-04	Repeal	1-1-05	333-119-0030	12-1-04	Amend	1-1-05
333-116-0680	12-1-04	Amend	1-1-05	333-119-0030(T)	12-1-04	Repeal	1-1-05
333-116-0680	4-11-05	Amend	5-1-05	333-119-0040	12-1-04	Amend	1-1-05
333-116-0680(T)	12-1-04	Repeal	1-1-05	333-119-0040(T)	12-1-04	Repeal	1-1-05
333-116-0720	12-1-04	Amend	1-1-05	333-119-0080	12-1-04	Amend	1-1-05
333-116-0720(T)	12-1-04	Repeal	1-1-05	333-119-0080(T)	12-1-04	Repeal	1-1-05
333-116-0730	12-1-04	Amend	1-1-05	333-119-0090	12-1-04	Amend	1-1-05
333-116-0730(T)	12-1-04	Repeal	1-1-05	333-119-0090(T)	12-1-04	Repeal	1-1-05
333-116-0830	12-1-04	Amend	1-1-05	333-119-0100	12-1-04	Amend	1-1-05
333-116-0830(T)	12-1-04	Repeal	1-1-05	333-119-0100(T)	12-1-04	Repeal	1-1-05
333-116-0860	4-11-05	Amend	5-1-05	333-119-0120	12-1-04	Amend	1-1-05
333-116-0880	4-11-05	Amend	5-1-05	333-119-0120(T)	12-1-04	Repeal	1-1-05
333-116-0905	12-1-04	Adopt	1-1-05	333-120-0015	12-1-04	Adopt	1-1-05
333-116-0905(T)	12-1-04	Repeal	1-1-05	333-120-0015(T)	12-1-04	Repeal	1-1-05
333-116-0910	12-1-04	Adopt	1-1-05	333-120-0017	12-1-04	Adopt	1-1-05
333-116-0910(T)	12-1-04	Repeal	1-1-05	333-120-0017(T)	12-1-04	Repeal	1-1-05
333-116-0915	12-1-04	Adopt	1-1-05	333-120-0100	12-1-04	Amend	1-1-05
333-116-0915(T)	12-1-04	Repeal	1-1-05	333-120-0100(T)	12-1-04	Repeal	1-1-05
333-118-0020	12-1-04	Amend	1-1-05	333-120-0110	12-1-04	Amend	1-1-05
333-118-0020(T)	12-1-04	Repeal	1-1-05	333-120-0110(T)	12-1-04	Repeal	1-1-05
333-118-0040	12-1-04	Amend	1-1-05	333-120-0130	12-1-04	Amend	1-1-05
333-118-0040(T)	12-1-04	Repeal	1-1-05	333-120-0130(T)	12-1-04	Repeal	1-1-05
333-118-0050	12-1-04	Amend	1-1-05	333-120-0170	12-1-04	Amend	1-1-05
333-118-0050(T)	12-1-04	Repeal	1-1-05	333-120-0170(T)	12-1-04	Repeal	1-1-05
333-118-0060	12-1-04	Amend	1-1-05	333-120-0180	12-1-04	Amend	1-1-05
333-118-0060(T)	12-1-04	Repeal	1-1-05	333-120-0180(T)	12-1-04	Repeal	1-1-05
333-118-0070	12-1-04	Amend	1-1-05	333-120-0190	12-1-04	Amend	1-1-05
333-118-0070(T)	12-1-04	Repeal	1-1-05	333-120-0190(T)	12-1-04	Repeal	1-1-05
333-118-0080	12-1-04	Amend	1-1-05	333-120-0200	12-1-04	Amend	1-1-05
333-118-0080(T)	12-1-04	Repeal	1-1-05	333-120-0200(T)	12-1-04	Repeal	1-1-05
333-118-0090	12-1-04	Amend	1-1-05	333-120-0210	12-1-04	Amend	1-1-05
333-118-0090(T)	12-1-04	Repeal	1-1-05	333-120-0210(T)	12-1-04	Repeal	1-1-05
333-118-0100	12-1-04	Amend	1-1-05	333-120-0215	12-1-04	Adopt	1-1-05
333-118-0100(T)	12-1-04	Repeal	1-1-05	333-120-0215(T)	12-1-04	Repeal	1-1-05
333-118-0110	12-1-04	Amend	1-1-05	333-120-0220	12-1-04	Amend	1-1-05
333-118-0110(T)	12-1-04	Repeal	1-1-05	333-120-0220(T)	12-1-04	Repeal	1-1-05
333-118-0120	12-1-04	Amend	1-1-05	333-120-0230	12-1-04	Amend	1-1-05
333-118-0120(T)	12-1-04	Repeal	1-1-05	333-120-0230(T)	12-1-04	Repeal	1-1-05
333-118-0130	12-1-04	Amend	1-1-05	333-120-0240	12-1-04	Amend	1-1-05



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333-120-0240(T)	12-1-04	Repeal	1-1-05	333-121-0160	4-11-05	Adopt	5-1-05
333-120-0250	12-1-04	Amend	1-1-05	333-121-0170	4-11-05	Adopt	5-1-05
333-120-0250(T)	12-1-04	Repeal	1-1-05	333-121-0180	4-11-05	Adopt	5-1-05
333-120-0320	12-1-04	Amend	1-1-05	333-121-0190	4-11-05	Adopt	5-1-05
333-120-0320(T)	12-1-04	Repeal	1-1-05	333-121-0200	4-11-05	Adopt	5-1-05
333-120-0400	12-1-04	Amend	1-1-05	333-121-0300	4-11-05	Adopt	5-1-05
333-120-0400(T)	12-1-04	Repeal	1-1-05	333-121-0310	4-11-05	Adopt	5-1-05
333-120-0420	12-1-04	Amend	1-1-05	333-121-0320	4-11-05	Adopt	5-1-05
333-120-0420(T)	12-1-04	Repeal	1-1-05	333-121-0330	4-11-05	Adopt	5-1-05
333-120-0430	12-1-04	Amend	1-1-05	333-121-0340	4-11-05	Adopt	5-1-05
333-120-0430(T)	12-1-04	Repeal	1-1-05	333-121-0350	4-11-05	Adopt	5-1-05
333-120-0450	12-1-04	Amend	1-1-05	333-121-0360	4-11-05	Adopt	5-1-05
333-120-0450(T)	12-1-04	Repeal	1-1-05	333-121-0370	4-11-05	Adopt	5-1-05
333-120-0460	12-1-04	Amend	1-1-05	333-121-0380	4-11-05	Adopt	5-1-05
333-120-0460(T)	12-1-04	Repeal	1-1-05	333-121-0390	4-11-05	Adopt	5-1-05
333-120-0520	12-1-04	Amend	1-1-05	333-121-0500	4-11-05	Adopt	5-1-05
333-120-0520(T)	12-1-04	Repeal	1-1-05	333-121-0510	4-11-05	Adopt	5-1-05
333-120-0540	12-1-04	Amend	1-1-05	333-150-0000	1-14-05	Amend	2-1-05
333-120-0540(T)	12-1-04	Repeal	1-1-05	333-505-0007	2-4-05	Amend	3-1-05
333-120-0550	12-1-04	Amend	1-1-05	334-001-0012	6-24-05	Amend(T)	8-1-05
333-120-0550(T)	12-1-04	Repeal	1-1-05	334-001-0012	7-1-05	Amend	8-1-05
333-120-0560	12-1-04	Amend	1-1-05	334-001-0045	7-1-05	Amend	8-1-05
333-120-0560(T)	12-1-04	Repeal	1-1-05	334-010-0050	2-23-05	Amend	4-1-05
333-120-0600	12-1-04	Amend	1-1-05	340-012-0026	6-1-05	Amend	6-1-05
333-120-0600(T)	12-1-04	Repeal	1-1-05	340-012-0027	6-1-05	Adopt	6-1-05
333-120-0610	12-1-04	Amend	1-1-05	340-012-0028	6-1-05	Amend	6-1-05
333-120-0610(T)	12-1-04	Repeal	1-1-05	340-012-0030	6-1-05	Amend	6-1-05
333-120-0640	12-1-04	Amend	1-1-05	340-012-0040	6-1-05	Am. & Ren.	6-1-05
333-120-0640(T)	12-1-04	Repeal	1-1-05	340-012-0041	6-1-05	Amend	6-1-05
333-120-0650	12-1-04	Amend	1-1-05	340-012-0042	6-1-05	Am. & Ren.	6-1-05
333-120-0650(T)	12-1-04	Repeal	1-1-05	340-012-0045	6-1-05	Amend	6-1-05
333-120-0660	12-1-04	Amend	1-1-05	340-012-0046	6-1-05	Repeal	6-1-05
333-120-0660(T)	12-1-04	Repeal	1-1-05	340-012-0047	6-1-05	Am. & Ren.	6-1-05
333-120-0670	12-1-04	Amend	1-1-05	340-012-0048	6-1-05	Am. & Ren.	6-1-05
333-120-0670(T)	12-1-04	Repeal	1-1-05	340-012-0049	6-1-05	Am. & Ren.	6-1-05
333-120-0680	12-1-04	Amend	1-1-05	340-012-0050	6-1-05	Am. & Ren.	6-1-05
333-120-0680(T)	12-1-04	Repeal	1-1-05	340-012-0052	6-1-05	Repeal	6-1-05
333-120-0700	12-1-04	Amend	1-1-05	340-012-0053	6-1-05	Adopt	6-1-05
333-120-0700(T)	12-1-04	Repeal	1-1-05	340-012-0055	6-1-05	Amend	6-1-05
333-120-0710	12-1-04	Amend	1-1-05	340-012-0060	3-1-05	Amend	3-1-05
333-120-0710(T)	12-1-04	Repeal	1-1-05	340-012-0065	6-1-05	Amend	6-1-05
333-120-0720	12-1-04	Amend	1-1-05	340-012-0066	6-1-05	Amend	6-1-05
333-120-0720(T)	12-1-04	Repeal	1-1-05	340-012-0067	6-1-05	Amend	6-1-05
333-121-0001	4-11-05	Adopt	5-1-05	340-012-0068	6-1-05	Amend	6-1-05
333-121-0010	4-11-05	Adopt	5-1-05	340-012-0071	6-1-05	Amend	6-1-05
333-121-0020	4-11-05	Adopt	5-1-05	340-012-0072	6-1-05	Amend	6-1-05
333-121-0030	4-11-05	Adopt	5-1-05	340-012-0073	6-1-05	Amend	6-1-05
333-121-0040	4-11-05	Adopt	5-1-05	340-012-0074	6-1-05	Adopt	6-1-05
333-121-0050	4-11-05	Adopt	5-1-05	340-012-0079	6-1-05	Adopt	6-1-05
333-121-0060	4-11-05	Adopt	5-1-05	340-012-0081	6-1-05	Amend	6-1-05
333-121-0100	4-11-05	Adopt	5-1-05	340-012-0082	6-1-05	Amend	6-1-05
333-121-0110	4-11-05	Adopt	5-1-05	340-012-0083	6-1-05	Amend	6-1-05
333-121-0120	4-11-05	Adopt	5-1-05	340-012-0090	6-1-05	Am. & Ren.	6-1-05
333-121-0130	4-11-05	Adopt	5-1-05	340-012-0097	6-1-05	Adopt	6-1-05
333-121-0140	4-11-05	Adopt	5-1-05	340-012-0130	6-1-05	Adopt	6-1-05
333-121-0150	4-11-05	Adopt	5-1-05	340-012-0145	6-1-05	Adopt	6-1-05

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340-012-0160	6-1-05	Adopt	6-1-05	340-071-0440	3-1-05	Amend	2-1-05
340-012-0162	6-1-05	Adopt	6-1-05	340-071-0445	3-1-05	Amend	2-1-05
340-016-0055	11-19-04	Amend	1-1-05	340-071-0450	3-1-05	Repeal	2-1-05
340-045-0033	7-1-05	Amend	8-1-05	340-071-0460	3-1-05	Amend	2-1-05
340-045-0070	7-1-05	Amend	8-1-05	340-071-0500	3-1-05	Amend	2-1-05
340-045-0075	7-1-05	Amend	8-1-05	340-071-0520	3-1-05	Amend	2-1-05
340-071-0100	3-1-05	Amend	2-1-05	340-071-0600	3-1-05	Amend	2-1-05
340-071-0110	3-1-05	Amend	2-1-05	340-071-0650	3-1-05	Adopt	2-1-05
340-071-0115	3-1-05	Amend	2-1-05	340-073-0025	3-1-05	Amend	2-1-05
340-071-0116	3-1-05	Am. & Ren.	2-1-05	340-073-0026	3-1-05	Amend	2-1-05
340-071-0117	3-1-05	Am. & Ren.	2-1-05	340-073-0030	3-1-05	Amend	2-1-05
340-071-0120	3-1-05	Amend	2-1-05	340-073-0035	3-1-05	Amend	2-1-05
340-071-0130	3-1-05	Amend	2-1-05	340-073-0040	3-1-05	Amend	2-1-05
340-071-0131	3-1-05	Adopt	2-1-05	340-073-0041	3-1-05	Amend	2-1-05
340-071-0140	3-1-05	Amend	2-1-05	340-073-0045	3-1-05	Amend	2-1-05
340-071-0150	3-1-05	Amend	2-1-05	340-073-0050	3-1-05	Amend	2-1-05
340-071-0155	3-1-05	Amend	2-1-05	340-073-0055	3-1-05	Amend	2-1-05
340-071-0160	3-1-05	Amend	2-1-05	340-073-0056	3-1-05	Amend	2-1-05
340-071-0162	3-1-05	Amend	2-1-05	340-073-0060	3-1-05	Amend	2-1-05
340-071-0165	3-1-05	Amend	2-1-05	340-073-0065	3-1-05	Amend	2-1-05
340-071-0170	3-1-05	Amend	2-1-05	340-073-0070	3-1-05	Amend	2-1-05
340-071-0175	3-1-05	Amend	2-1-05	340-073-0075	3-1-05	Amend	2-1-05
340-071-0185	3-1-05	Amend	2-1-05	340-073-0080	3-1-05	Amend	2-1-05
340-071-0195	3-1-05	Repeal	2-1-05	340-073-0085	3-1-05	Amend	2-1-05
340-071-0200	3-1-05	Amend	2-1-05	340-090-0040	7-14-05	Amend	8-1-05
340-071-0205	3-1-05	Amend	2-1-05	340-090-0045	7-14-05	Amend	8-1-05
340-071-0210	3-1-05	Amend	2-1-05	340-090-0050	7-14-05	Amend	8-1-05
340-071-0215	3-1-05	Amend	2-1-05	340-090-0060	7-14-05	Amend	8-1-05
340-071-0220	3-1-05	Amend	2-1-05	340-100-0002	7-14-05	Amend	8-1-05
340-071-0260	3-1-05	Amend	2-1-05	340-102-0065	7-14-05	Amend	8-1-05
340-071-0265	3-1-05	Amend	2-1-05	340-141-0005	7-14-05	Amend	8-1-05
340-071-0270	3-1-05	Amend	2-1-05	340-141-0010	7-14-05	Amend	8-1-05
340-071-0275	3-1-05	Amend	2-1-05	340-141-0140	7-14-05	Amend	8-1-05
340-071-0280	3-1-05	Amend	2-1-05	340-142-0005	7-14-05	Amend	8-1-05
340-071-0285	3-1-05	Amend	2-1-05	340-142-0130	7-14-05	Amend	8-1-05
340-071-0295	3-1-05	Amend	2-1-05	340-150-0250	12-27-04	Amend	2-1-05
340-071-0300	3-1-05	Repeal	2-1-05	340-162-0150	7-14-05	Amend	8-1-05
340-071-0302	3-1-05	Amend	2-1-05	340-177-0095	7-14-05	Amend	8-1-05
340-071-0305	3-1-05	Am. & Ren.	2-1-05	340-200-0020	2-10-05	Amend	3-1-05
340-071-0310	3-1-05	Amend	2-1-05	340-200-0040	12-15-04	Amend	1-1-05
340-071-0315	3-1-05	Amend	2-1-05	340-200-0040	1-4-05	Amend	2-1-05
340-071-0320	3-1-05	Amend	2-1-05	340-200-0040	2-10-05	Amend	3-1-05
340-071-0325	3-1-05	Amend	2-1-05	340-200-0040	6-1-05	Amend	6-1-05
340-071-0330	3-1-05	Amend	2-1-05	340-200-0040	7-12-05	Amend	8-1-05
340-071-0335	3-1-05	Amend	2-1-05	340-204-0010	1-4-05	Amend	2-1-05
340-071-0340	3-1-05	Amend	2-1-05	340-204-0030	1-4-05	Amend	2-1-05
340-071-0345	3-1-05	Amend	2-1-05	340-204-0040	1-4-05	Amend	2-1-05
340-071-0360	3-1-05	Amend	2-1-05	340-204-0090	12-15-04	Amend	1-1-05
340-071-0400	3-1-05	Amend	2-1-05	340-218-0080	2-10-05	Amend	3-1-05
340-071-0401	3-1-05	Repeal	2-1-05	340-220-0030	7-11-05	Amend	8-1-05
340-071-0410	3-1-05	Amend	2-1-05	340-220-0040	7-11-05	Amend	8-1-05
340-071-0415	3-1-05	Amend	2-1-05	340-220-0050	7-11-05	Amend	8-1-05
340-071-0420	3-1-05	Amend	2-1-05	340-224-0060	1-4-05	Amend	2-1-05
340-071-0425	3-1-05	Amend	2-1-05	340-224-0070	1-4-05	Amend	2-1-05
340-071-0430	3-1-05	Amend	2-1-05	340-225-0020	1-4-05	Amend	2-1-05

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340-225-0090	1-4-05	Amend	2-1-05	350-081-0038	7-1-05	Adopt	7-1-05
340-230-0030	2-10-05	Amend	3-1-05	350-081-0040	7-1-05	Adopt	7-1-05
340-230-0410	2-10-05	Amend	3-1-05	350-081-0042	7-1-05	Adopt	7-1-05
340-238-0040	2-10-05	Amend	3-1-05	350-081-0044	7-1-05	Adopt	7-1-05
340-238-0060	2-10-05	Amend	3-1-05	350-081-0046	7-1-05	Adopt	7-1-05
340-240-0030	1-4-05	Amend	2-1-05	350-081-0050	7-1-05	Adopt	7-1-05
340-240-0100	1-4-05	Amend	2-1-05	350-081-0052	7-1-05	Adopt	7-1-05
340-240-0110	1-4-05	Amend	2-1-05	350-081-0054	7-1-05	Adopt	7-1-05
340-240-0120	1-4-05	Amend	2-1-05	350-081-0060	7-1-05	Adopt	7-1-05
340-240-0130	1-4-05	Amend	2-1-05	350-081-0070	7-1-05	Adopt	7-1-05
340-240-0140	1-4-05	Amend	2-1-05	350-081-0072	7-1-05	Adopt	7-1-05
340-240-0150	1-4-05	Amend	2-1-05	350-081-0074	7-1-05	Adopt	7-1-05
340-240-0180	1-4-05	Amend	2-1-05	350-081-0076	7-1-05	Adopt	7-1-05
340-240-0190	1-4-05	Amend	2-1-05	350-081-0078	7-1-05	Adopt	7-1-05
340-240-0200	1-4-05	Repeal	2-1-05	350-081-0080	7-1-05	Adopt	7-1-05
340-240-0210	1-4-05	Amend	2-1-05	350-081-0082	7-1-05	Adopt	7-1-05
340-240-0220	1-4-05	Amend	2-1-05	350-081-0084	7-1-05	Adopt	7-1-05
340-240-0230	1-4-05	Amend	2-1-05	350-081-0086	7-1-05	Adopt	7-1-05
340-240-0240	1-4-05	Repeal	2-1-05	350-081-0090	7-1-05	Adopt	7-1-05
340-240-0270	1-4-05	Repeal	2-1-05	350-081-0092	7-1-05	Adopt	7-1-05
340-242-0440	12-15-04	Amend	1-1-05	350-081-0094	7-1-05	Adopt	7-1-05
340-244-0030	2-10-05	Amend	3-1-05	350-081-0096	7-1-05	Adopt	7-1-05
340-244-0040	2-10-05	Amend	3-1-05	350-081-0098	7-1-05	Adopt	7-1-05
340-244-0120	2-10-05	Amend	3-1-05	350-081-0100	7-1-05	Adopt	7-1-05
340-244-0210	2-10-05	Amend	3-1-05	350-081-0102	7-1-05	Adopt	7-1-05
340-244-0220	2-10-05	Amend	3-1-05	350-081-0104	7-1-05	Adopt	7-1-05
340-244-0230	2-10-05	Amend	3-1-05	350-081-0106	7-1-05	Adopt	7-1-05
340-256-0010	7-12-05	Amend	8-1-05	350-081-0108	7-1-05	Adopt	7-1-05
340-256-0100	7-12-05	Amend	8-1-05	350-081-0110	7-1-05	Adopt	7-1-05
340-256-0130	7-12-05	Amend	8-1-05	350-081-0112	7-1-05	Adopt	7-1-05
340-256-0300	7-12-05	Amend	8-1-05	350-081-0120	7-1-05	Adopt	7-1-05
340-256-0310	7-12-05	Amend	8-1-05	350-081-0124	7-1-05	Adopt	7-1-05
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340-256-0380	7-12-05	Amend	8-1-05	350-081-0180	7-1-05	Adopt	7-1-05
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345-026-0320	5-23-05	Repeal	7-1-05	350-081-0210	7-1-05	Adopt	7-1-05
345-026-0330	5-23-05	Amend	7-1-05	350-081-0220	7-1-05	Adopt	7-1-05
345-026-0340	5-23-05	Amend	7-1-05	350-081-0230	7-1-05	Adopt	7-1-05
345-026-0350	5-23-05	Amend	7-1-05	350-081-0232	7-1-05	Adopt	7-1-05
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350-081-0032	7-1-05	Adopt	7-1-05	350-081-0320	7-1-05	Adopt	7-1-05
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350-081-0338	7-1-05	Adopt	7-1-05	410-050-0431	2-1-05	Adopt	3-1-05
350-081-0340	7-1-05	Adopt	7-1-05	410-050-0441	2-1-05	Adopt	3-1-05
350-081-0350	7-1-05	Adopt	7-1-05	410-050-0451	2-1-05	Adopt	3-1-05
350-081-0360	7-1-05	Adopt	7-1-05	410-050-0461	2-1-05	Adopt	3-1-05
350-081-0365	7-1-05	Adopt	7-1-05	410-050-0471	2-1-05	Adopt	3-1-05
350-081-0370	7-1-05	Adopt	7-1-05	410-050-0481	2-1-05	Adopt	3-1-05
350-081-0380	7-1-05	Adopt	7-1-05	410-050-0491	2-1-05	Adopt	3-1-05
350-081-0390	7-1-05	Adopt	7-1-05	410-050-0501	2-1-05	Adopt	3-1-05
350-081-0400	7-1-05	Adopt	7-1-05	410-050-0511	2-1-05	Adopt	3-1-05
350-081-0410	7-1-05	Adopt	7-1-05	410-050-0521	2-1-05	Adopt	3-1-05
350-081-0415	7-1-05	Adopt	7-1-05	410-050-0531	2-1-05	Adopt	3-1-05
350-081-0420	7-1-05	Adopt	7-1-05	410-050-0541	2-1-05	Adopt	3-1-05
350-081-0430	7-1-05	Adopt	7-1-05	410-050-0551	2-1-05	Adopt	3-1-05
350-081-0440	7-1-05	Adopt	7-1-05	410-050-0561	2-1-05	Adopt	3-1-05
350-081-0445	7-1-05	Adopt	7-1-05	410-050-0571	2-1-05	Adopt	3-1-05
350-081-0450	7-1-05	Adopt	7-1-05	410-050-0581	2-1-05	Adopt	3-1-05
350-081-0460	7-1-05	Adopt	7-1-05	410-050-0591	2-1-05	Adopt	3-1-05
350-081-0470	7-1-05	Adopt	7-1-05	410-050-0700	5-7-05	Adopt	5-1-05
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350-081-0490	7-1-05	Adopt	7-1-05	410-050-0730	5-7-05	Adopt	5-1-05
350-081-0500	7-1-05	Adopt	7-1-05	410-050-0740	5-7-05	Adopt	5-1-05
350-081-0510	7-1-05	Adopt	7-1-05	410-050-0750	5-7-05	Adopt	5-1-05
350-081-0520	7-1-05	Adopt	7-1-05	410-050-0760	5-7-05	Adopt	5-1-05
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350-081-0550	7-1-05	Adopt	7-1-05	410-050-0790	5-7-05	Adopt	5-1-05
350-081-0560	7-1-05	Adopt	7-1-05	410-050-0800	5-7-05	Adopt	5-1-05
350-081-0570	7-1-05	Adopt	7-1-05	410-050-0810	5-7-05	Adopt	5-1-05
350-081-0580	7-1-05	Adopt	7-1-05	410-050-0820	5-7-05	Adopt	5-1-05
350-081-0590	7-1-05	Adopt	7-1-05	410-050-0830	5-7-05	Adopt	5-1-05
350-081-0600	7-1-05	Adopt	7-1-05	410-050-0840	5-7-05	Adopt	5-1-05
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350-081-0620	7-1-05	Adopt	7-1-05	410-050-0860	12-3-04	Amend(T)	1-1-05
350-081-0630	7-1-05	Adopt	7-1-05	410-050-0860	5-7-05	Adopt	5-1-05
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410-003-0020	3-1-05	Adopt(T)	4-1-05	410-050-0860	7-11-05	Amend	8-1-05
410-007-0210	3-29-05	Amend	5-1-05	410-050-0860(T)	7-11-05	Repeal	8-1-05
410-007-0220	3-29-05	Amend	5-1-05	410-050-0861	5-10-05	Adopt(T)	6-1-05
410-007-0230	3-29-05	Amend	5-1-05	410-050-0861	7-11-05	Adopt	8-1-05
410-007-0240	3-29-05	Amend	5-1-05	410-050-0861(T)	7-11-05	Repeal	8-1-05
410-007-0250	3-29-05	Amend	5-1-05	410-050-0870	5-7-05	Adopt	5-1-05
410-007-0260	3-29-05	Amend	5-1-05	410-120-0000	4-1-05	Amend	4-1-05
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410-007-0300	3-29-05	Amend	5-1-05	410-120-1295	2-9-05	Amend(T)	3-1-05
410-007-0310	3-29-05	Amend	5-1-05	410-120-1295	7-1-05	Amend	8-1-05
410-007-0320	3-29-05	Amend	5-1-05	410-120-1295(T)	2-9-05	Suspend	3-1-05
410-007-0330	3-29-05	Amend	5-1-05	410-120-1295(T)	7-1-05	Repeal	8-1-05
410-007-0340	3-29-05	Amend	5-1-05	410-120-1320	4-1-05	Amend	4-1-05
410-007-0370	3-29-05	Amend	5-1-05	410-121-0021	4-1-05	Amend	4-1-05
410-007-0380	3-29-05	Amend	5-1-05	410-121-0030	12-1-04	Amend	1-1-05
410-050-0401	2-1-05	Adopt	3-1-05	410-121-0030	4-1-05	Amend	5-1-05
410-050-0411	2-1-05	Adopt	3-1-05	410-121-0030	7-1-05	Amend	8-1-05

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410-121-0040	12-1-04	Amend	1-1-05	410-125-0141	4-1-05	Amend	5-1-05
410-121-0135	4-1-05	Amend	4-1-05	410-125-0195	4-1-05	Amend	5-1-05
410-121-0150	4-1-05	Amend	4-1-05	410-125-0220	4-1-05	Amend	4-1-05
410-121-0155	4-1-05	Amend	5-1-05	410-125-0410	4-1-05	Amend	4-1-05
410-121-0157	1-14-05	Amend(T)	2-1-05	410-125-1070	7-1-05	Amend	8-1-05
410-121-0157	3-31-05	Amend	4-1-05	410-129-0070	4-1-05	Amend	4-1-05
410-121-0157	4-1-05	Amend(T)	4-1-05	410-129-0200	4-1-05	Amend	4-1-05
410-121-0157	6-6-05	Amend	7-1-05	410-129-0240	4-1-05	Amend	4-1-05
410-121-0157(T)	3-31-05	Repeal	4-1-05	410-130-0010	4-1-05	Repeal	4-1-05
410-121-0157(T)	6-6-05	Repeal	7-1-05	410-130-0020	4-1-05	Repeal	4-1-05
410-121-0160	4-1-05	Amend	5-1-05	410-130-0040	4-1-05	Repeal	4-1-05
410-121-0185	4-1-05	Amend	4-1-05	410-130-0160	4-1-05	Amend	4-1-05
410-121-0190	4-1-05	Amend	4-1-05	410-130-0180	4-1-05	Amend	4-1-05
410-121-0300	12-10-04	Amend(T)	1-1-05	410-130-0200	4-1-05	Amend	4-1-05
410-121-0300	2-1-05	Amend	3-1-05	410-130-0220	4-1-05	Amend	4-1-05
410-121-0300	4-1-05	Amend(T)	5-1-05	410-130-0240	12-1-04	Amend	1-1-05
410-121-0300	6-6-05	Amend	7-1-05	410-130-0240	4-1-05	Amend	4-1-05
410-121-0300(T)	6-6-05	Repeal	7-1-05	410-130-0368	4-1-05	Adopt	4-1-05
410-121-0320	1-1-05	Amend	2-1-05	410-130-0587	4-1-05	Amend	4-1-05
410-122-0010	4-1-05	Amend	4-1-05	410-130-0610	4-1-05	Adopt	4-1-05
410-122-0020	4-1-05	Amend	4-1-05	410-130-0680	4-1-05	Amend	4-1-05
410-122-0040	4-1-05	Amend	4-1-05	410-130-0700	4-1-05	Amend	4-1-05
410-122-0055	4-1-05	Amend	4-1-05	410-131-0120	4-1-05	Amend	4-1-05
410-122-0190	1-1-05	Amend	2-1-05	410-131-0280	4-1-05	Amend	4-1-05
410-122-0200	4-1-05	Amend	4-1-05	410-133-0000	4-5-05	Amend(T)	5-1-05
410-122-0202	1-1-05	Amend	2-1-05	410-133-0040	4-5-05	Amend(T)	5-1-05
410-122-0202	4-1-05	Amend	4-1-05	410-133-0060	4-5-05	Amend(T)	5-1-05
410-122-0203	4-1-05	Amend	4-1-05	410-133-0080	4-5-05	Amend(T)	5-1-05
410-122-0204	1-1-05	Amend	2-1-05	410-133-0090	4-5-05	Amend(T)	5-1-05
410-122-0204	4-1-05	Amend	4-1-05	410-133-0100	4-5-05	Amend(T)	5-1-05
410-122-0207	1-1-05	Amend	2-1-05	410-133-0120	4-5-05	Amend(T)	5-1-05
410-122-0208	1-1-05	Amend	2-1-05	410-133-0140	4-5-05	Amend(T)	5-1-05
410-122-0208	4-1-05	Amend	4-1-05	410-133-0160	4-5-05	Amend(T)	5-1-05
410-122-0209	4-1-05	Amend	4-1-05	410-133-0180	4-5-05	Amend(T)	5-1-05
410-122-0210	4-1-05	Amend	4-1-05	410-133-0200	4-5-05	Amend(T)	5-1-05
410-122-0340	1-1-05	Amend	2-1-05	410-133-0220	4-5-05	Amend(T)	5-1-05
410-122-0365	1-1-05	Amend	2-1-05	410-133-0245	4-5-05	Adopt(T)	5-1-05
410-122-0375	4-1-05	Amend	4-1-05	410-133-0280	4-5-05	Amend(T)	5-1-05
410-122-0400	1-1-05	Amend	2-1-05	410-133-0300	4-5-05	Amend(T)	5-1-05
410-122-0420	4-1-05	Amend	4-1-05	410-133-0320	4-5-05	Amend(T)	5-1-05
410-122-0475	1-1-05	Amend	2-1-05	410-133-0340	4-5-05	Amend(T)	5-1-05
410-122-0560	1-1-05	Amend	2-1-05	410-141-0000	5-1-05	Amend	6-1-05
410-122-0580	1-1-05	Amend	2-1-05	410-141-0060	5-1-05	Amend	6-1-05
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410-122-0630	1-1-05	Amend	2-1-05	410-141-0080	5-1-05	Amend	6-1-05
410-122-0660	4-1-05	Amend	4-1-05	410-141-0110	5-1-05	Amend	6-1-05
410-122-0720	1-1-05	Amend	2-1-05	410-141-0120	5-1-05	Amend	6-1-05
410-123-1085	4-1-05	Amend	4-1-05	410-141-0140	5-1-05	Amend	6-1-05
410-123-1260	4-1-05	Amend	4-1-05	410-141-0160	5-1-05	Amend	6-1-05
410-123-1670	4-1-05	Amend	4-1-05	410-141-0180	5-1-05	Amend	6-1-05
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410-124-0000	12-30-04	Amend(T)	2-1-05	410-141-0220	5-1-05	Amend	6-1-05
410-124-0000(T)	12-10-04	Suspend	1-1-05	410-141-0280	5-1-05	Amend	6-1-05
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410-141-0340	5-1-05	Amend	6-1-05	411-045-0050	1-4-05	Amend	2-1-05
410-141-0400	5-1-05	Amend	6-1-05	411-045-0060	1-4-05	Amend	2-1-05
410-141-0405	5-1-05	Amend	6-1-05	411-045-0070	1-4-05	Amend	2-1-05
410-141-0420	5-1-05	Amend	6-1-05	411-045-0080	1-4-05	Amend	2-1-05
410-141-0440	5-1-05	Amend	6-1-05	411-045-0090	1-4-05	Amend	2-1-05
410-141-0480	5-1-05	Amend	6-1-05	411-045-0100	1-4-05	Amend	2-1-05
410-141-0520	5-1-05	Amend	6-1-05	411-045-0110	1-4-05	Amend	2-1-05
410-142-0300	12-16-04	Amend	1-1-05	411-045-0120	1-4-05	Amend	2-1-05
410-146-0080	4-1-05	Amend	4-1-05	411-045-0130	1-4-05	Amend	2-1-05
410-147-0365	3-18-05	Adopt(T)	4-1-05	411-045-0140	1-4-05	Amend	2-1-05
410-147-0365	6-1-05	Adopt	6-1-05	411-070-0033	4-19-05	Adopt	6-1-05
410-148-0090	4-1-05	Amend	4-1-05	411-070-0359	12-28-04	Amend	2-1-05
411-002-0155	6-6-05	Adopt	7-1-05	411-070-0428	12-28-04	Amend	2-1-05
411-002-0175	12-30-04	Adopt	2-1-05	411-070-0440	12-28-04	Repeal	2-1-05
411-015-0015	1-4-05	Amend	2-1-05	411-070-0442	12-28-04	Adopt	2-1-05
411-015-0100	1-4-05	Amend	2-1-05	411-070-0446	12-28-04	Repeal	2-1-05
411-020-0000	7-1-05	Amend	6-1-05	411-070-0465	12-28-04	Amend	2-1-05
411-020-0002	7-1-05	Amend	6-1-05	411-335-0010	1-1-05	Adopt	1-1-05
411-020-0010	7-1-05	Amend	6-1-05	411-335-0020	1-1-05	Adopt	1-1-05
411-020-0015	7-1-05	Amend	6-1-05	411-335-0030	1-1-05	Adopt	1-1-05
411-020-0020	7-1-05	Amend	6-1-05	411-335-0040	1-1-05	Adopt	1-1-05
411-020-0030	7-1-05	Amend	6-1-05	411-335-0050	1-1-05	Adopt	1-1-05
411-020-0040	7-1-05	Amend	6-1-05	411-335-0060	1-1-05	Adopt	1-1-05
411-020-0050	7-1-05	Am. & Ren.	6-1-05	411-335-0070	1-1-05	Adopt	1-1-05
411-020-0060	7-1-05	Adopt	6-1-05	411-335-0080	1-1-05	Adopt	1-1-05
411-020-0070	7-1-05	Adopt	6-1-05	411-335-0090	1-1-05	Adopt	1-1-05
411-020-0080	7-1-05	Adopt	6-1-05	411-335-0100	1-1-05	Adopt	1-1-05
411-020-0090	7-1-05	Adopt	6-1-05	411-335-0110	1-1-05	Adopt	1-1-05
411-020-0100	7-1-05	Adopt	6-1-05	411-335-0120	1-1-05	Adopt	1-1-05
411-020-0110	7-1-05	Adopt	6-1-05	411-335-0130	1-1-05	Adopt	1-1-05
411-020-0130	7-1-05	Adopt	6-1-05	411-335-0140	1-1-05	Adopt	1-1-05
411-027-0000	1-5-05	Amend	2-1-05	411-335-0150	1-1-05	Adopt	1-1-05
411-031-0020	1-1-05	Amend(T)	2-1-05	411-335-0160	1-1-05	Adopt	1-1-05
411-031-0020	7-1-05	Amend	8-1-05	411-335-0170	1-1-05	Adopt	1-1-05
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411-031-0040	7-1-05	Amend	8-1-05	411-335-0190	1-1-05	Adopt	1-1-05
411-031-0050	1-1-05	Amend(T)	2-1-05	411-335-0200	1-1-05	Adopt	1-1-05
411-034-0000	12-1-04	Amend	1-1-05	411-335-0210	1-1-05	Adopt	1-1-05
411-034-0010	12-1-04	Amend	1-1-05	411-335-0220	1-1-05	Adopt	1-1-05
411-034-0020	12-1-04	Amend	1-1-05	411-335-0230	1-1-05	Adopt	1-1-05
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411-034-0035	12-1-04	Adopt	1-1-05	411-335-0270	1-1-05	Adopt	1-1-05
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411-034-0050	12-1-04	Amend	1-1-05	411-335-0290	1-1-05	Adopt	1-1-05
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411-034-0055	7-1-05	Amend	8-1-05	411-335-0310	1-1-05	Adopt	1-1-05
411-034-0070	12-1-04	Amend	1-1-05	411-335-0320	1-1-05	Adopt	1-1-05
411-034-0070	7-1-05	Amend	8-1-05	411-335-0330	1-1-05	Adopt	1-1-05
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411-045-0000	1-4-05	Amend	2-1-05	411-335-0350	1-1-05	Adopt	1-1-05
411-045-0010	1-4-05	Amend	2-1-05	411-335-0360	1-1-05	Adopt	1-1-05
411-045-0020	1-4-05	Amend	2-1-05	411-335-0370	1-1-05	Adopt	1-1-05
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411-340-0030	6-23-05	Amend	8-1-05	413-010-0720	2-1-05	Amend	3-1-05
411-340-0040	6-23-05	Amend	8-1-05	413-010-0721	2-1-05	Amend	3-1-05
411-340-0050	6-23-05	Amend	8-1-05	413-010-0722	2-1-05	Amend	3-1-05
411-340-0060	6-23-05	Amend	8-1-05	413-010-0723	2-1-05	Amend	3-1-05
411-340-0080	6-23-05	Amend	8-1-05	413-010-0732	2-1-05	Amend	3-1-05
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411-340-0140	6-23-05	Amend	8-1-05	413-010-0746	2-1-05	Amend	3-1-05
411-340-0150	6-23-05	Amend	8-1-05	413-010-0748	2-1-05	Amend	3-1-05
411-340-0160	6-23-05	Amend	8-1-05	413-010-0750	2-1-05	Amend	3-1-05
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411-360-0030	2-1-05	Adopt	2-1-05	413-015-0305	2-1-05	Amend	3-1-05
411-360-0040	2-1-05	Adopt	2-1-05	413-015-0505	2-1-05	Amend	3-1-05
411-360-0050	2-1-05	Adopt	2-1-05	413-015-0511	2-1-05	Amend	3-1-05
411-360-0060	2-1-05	Adopt	2-1-05	413-015-0725	2-1-05	Amend	3-1-05
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411-360-0120	2-1-05	Adopt	2-1-05	413-015-1120	1-28-05	Adopt(T)	3-1-05
411-360-0130	2-1-05	Adopt	2-1-05	413-015-1125	1-28-05	Adopt(T)	3-1-05
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411-360-0275	2-1-05	Adopt	2-1-05	413-050-0550	1-1-05	Repeal	2-1-05
411-360-0280	2-1-05	Adopt	2-1-05	413-050-0555	1-1-05	Amend	2-1-05
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413-055-0145	1-1-05	Amend	2-1-05	416-490-0020	4-20-05	Adopt	6-1-05
413-055-0150	1-1-05	Amend	2-1-05	416-490-0030	4-20-05	Adopt	6-1-05
413-055-0155	1-1-05	Repeal	2-1-05	416-490-0040	4-20-05	Adopt	6-1-05
413-055-0160	1-1-05	Amend	2-1-05	416-490-0050	4-20-05	Adopt	6-1-05
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416-250-0030	1-11-05	Amend	2-1-05	416-800-0010	4-20-05	Amend	6-1-05
416-250-0040	1-11-05	Amend	2-1-05	416-800-0010	6-30-05	Amend	8-1-05
416-250-0050	1-11-05	Amend	2-1-05	416-800-0050	4-20-05	Amend	6-1-05
416-250-0060	1-11-05	Amend	2-1-05	416-800-0050	6-30-05	Amend	8-1-05
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416-250-0080	1-11-05	Amend	2-1-05	436-001-0265	7-1-05	Amend	7-1-05
416-250-0090	1-11-05	Amend	2-1-05	436-009-0004	4-1-05	Amend	5-1-05
416-315-0000	6-13-05	Adopt	7-1-05	436-009-0008	4-1-05	Amend	5-1-05
416-315-0010	6-13-05	Adopt	7-1-05	436-009-0010	4-1-05	Amend	5-1-05
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416-340-0090	3-25-05	Repeal	5-1-05	436-010-0220	4-1-05	Amend	5-1-05
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416-350-0000	6-13-05	Repeal	7-1-05	436-010-0250	4-1-05	Amend	5-1-05
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436-010-0290	4-1-05	Amend	5-1-05	436-110-0380	7-1-05	Amend	7-1-05
436-010-0300	4-1-05	Amend	5-1-05	436-110-0900	7-1-05	Amend	7-1-05
436-010-0330	4-1-05	Amend	5-1-05	436-120-0004	7-1-05	Amend	7-1-05
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436-050-0440	6-1-05	Amend	7-1-05	436-120-0320	7-1-05	Amend	7-1-05
436-050-0460	6-1-05	Amend	7-1-05	436-120-0340	7-1-05	Amend	7-1-05
436-050-0480	6-1-05	Amend	7-1-05	436-120-0350	7-1-05	Amend	7-1-05
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436-070-0005	4-1-05	Amend	5-1-05	436-120-0430	7-1-05	Amend	7-1-05
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436-070-0010	4-1-05	Amend	5-1-05	436-120-0500	7-1-05	Amend	7-1-05
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436-070-0050	4-1-05	Amend	5-1-05	436-120-0810	7-1-05	Amend	7-1-05
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437-007-1395	6-1-05	Repeal	7-1-05	443-002-0180	1-1-05	Adopt	2-1-05
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442-002-0050	3-1-05	Repeal	4-1-05	459-005-0535	12-15-04	Amend(T)	1-1-05
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459-050-0040	11-23-04	Amend	1-1-05	461-140-0040	4-1-05	Amend(T)	5-1-05
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635-003-0077	6-3-05	Amend(T)	7-1-05	635-014-0090	11-20-04	Amend(T)	1-1-05
635-003-0077	6-26-05	Amend(T)	8-1-05	635-014-0090	1-1-05	Amend	1-1-05
635-003-0077(T)	5-24-05	Suspend	7-1-05	635-014-0090	7-1-05	Amend(T)	8-1-05
635-003-0077(T)	6-3-05	Suspend	7-1-05	635-014-0090(T)	11-20-04	Suspend	1-1-05
635-003-0077(T)	6-26-05	Suspend	8-1-05	635-016-0080	1-1-05	Amend	1-1-05
635-003-0078	2-14-05	Adopt	3-1-05	635-016-0090	1-1-05	Amend	1-1-05
635-004-0003	5-1-05	Adopt	5-1-05	635-016-0090	1-1-05	Amend	2-1-05
635-004-0005	1-1-05	Amend	1-1-05	635-017-0080	1-1-05	Amend	1-1-05
635-004-0005	5-1-05	Amend(T)	6-1-05	635-017-0090	1-1-05	Amend	1-1-05
635-004-0005	7-1-05	Amend	8-1-05	635-017-0090	5-1-05	Amend	5-1-05
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635-019-0080	1-1-05	Amend	1-1-05	635-039-0090(T)	7-16-05	Suspend	8-1-05
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635-021-0080	1-1-05	Amend	1-1-05	635-041-0061	2-14-05	Amend	3-1-05
635-021-0090	1-1-05	Amend	1-1-05	635-041-0061(T)	2-14-05	Repeal	3-1-05
635-023-0080	1-1-05	Amend	1-1-05	635-041-0065	1-1-05	Amend(T)	2-1-05
635-023-0090	1-1-05	Amend	1-1-05	635-041-0065	1-31-05	Amend(T)	3-1-05
635-023-0090	1-1-05	Amend(T)	1-1-05	635-041-0065	3-15-05	Amend(T)	4-1-05
635-023-0090	1-1-05	Amend(T)	2-1-05	635-041-0065(T)	1-31-05	Suspend	3-1-05
635-023-0090(T)	1-1-05	Suspend	2-1-05	635-041-0065(T)	3-15-05	Suspend	4-1-05
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635-023-0095	6-24-05	Amend(T)	8-1-05	635-042-0022	2-14-05	Amend	3-1-05
635-023-0095	7-10-05	Amend(T)	8-1-05	635-042-0022	3-1-05	Amend(T)	4-1-05
635-023-0095	7-18-05	Amend(T)	8-1-05	635-042-0022	3-3-05	Amend(T)	4-1-05
635-023-0095(T)	2-14-05	Repeal	3-1-05	635-042-0022	3-7-05	Amend(T)	4-1-05
635-023-0095(T)	6-11-05	Suspend	7-1-05	635-042-0022	3-10-05	Amend(T)	4-1-05
635-023-0095(T)	6-24-05	Suspend	8-1-05	635-042-0022	3-15-05	Amend(T)	4-1-05
635-023-0095(T)	7-10-05	Suspend	8-1-05	635-042-0022	3-29-05	Amend(T)	5-1-05
635-023-0095(T)	7-18-05	Suspend	8-1-05	635-042-0022	3-31-05	Amend(T)	5-1-05
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635-023-0125	2-14-05	Amend	3-1-05	635-042-0022(T)	3-7-05	Suspend	4-1-05
635-023-0125	4-20-05	Amend(T)	6-1-05	635-042-0022(T)	3-10-05	Suspend	4-1-05
635-023-0125	5-5-05	Amend(T)	6-1-05	635-042-0022(T)	3-15-05	Suspend	4-1-05
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635-042-0145(T)	5-10-05	Suspend	6-1-05	635-067-0041	1-1-05	Amend	2-1-05
635-042-0145(T)	5-18-05	Suspend	7-1-05	635-068-0000	3-1-05	Amend	2-1-05
635-042-0145(T)	7-11-05	Suspend	8-1-05	635-068-0000	6-14-05	Amend	7-1-05
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635-430-0350	11-26-04	Amend	1-1-05	690-385-4400	11-16-04	Adopt	1-1-05
635-430-0360	11-26-04	Amend	1-1-05	690-385-4500	11-16-04	Adopt	1-1-05
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660-011-0060	2-14-05	Amend	3-1-05	690-385-7000	11-16-04	Adopt	1-1-05
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660-012-0060	4-11-05	Amend	5-1-05	695-035-0010	6-8-05	Amend	7-1-05
660-015-0000	2-14-05	Amend	3-1-05	695-035-0015	6-8-05	Adopt	7-1-05
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690-021-0080	11-16-04	Repeal	1-1-05	695-045-0040	2-1-05	Adopt	3-1-05
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690-021-0350	11-16-04	Am. & Ren.	1-1-05	695-045-0130	2-1-05	Adopt	3-1-05
690-021-0400	11-16-04	Repeal	1-1-05	695-045-0140	2-1-05	Adopt	3-1-05
690-021-0500	11-16-04	Repeal	1-1-05	695-045-0150	2-1-05	Adopt	3-1-05
690-021-0600	11-16-04	Am. & Ren.	1-1-05	695-046-0010	2-1-05	Adopt	3-1-05
690-021-0700	11-16-04	Am. & Ren.	1-1-05	695-046-0020	2-1-05	Adopt	3-1-05
690-385-2000	11-16-04	Adopt	1-1-05	695-046-0025	2-1-05	Adopt	3-1-05
690-385-2200	11-16-04	Adopt	1-1-05	695-046-0030	2-1-05	Adopt	3-1-05
690-385-3110	11-16-04	Adopt	1-1-05	695-046-0040	2-1-05	Adopt	3-1-05
690-385-3120	11-16-04	Adopt	1-1-05	695-046-0050	2-1-05	Adopt	3-1-05
690-385-3130	11-16-04	Adopt	1-1-05	695-046-0060	2-1-05	Adopt	3-1-05
690-385-3140	11-16-04	Adopt	1-1-05	695-046-0070	2-1-05	Adopt	3-1-05
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690-385-3500	11-16-04	Adopt	1-1-05	695-046-0090	2-1-05	Adopt	3-1-05
690-385-3520	11-16-04	Adopt	1-1-05	695-046-0100	2-1-05	Adopt	3-1-05
690-385-3600	11-16-04	Adopt	1-1-05	695-046-0110	2-1-05	Adopt	3-1-05
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695-046-0140	2-1-05	Adopt	3-1-05	731-005-0540	3-1-05	Adopt	4-1-05
695-046-0150	2-1-05	Adopt	3-1-05	731-005-0550	3-1-05	Adopt	4-1-05
695-046-0160	2-1-05	Adopt	3-1-05	731-005-0560	3-1-05	Adopt	4-1-05
695-046-0170	2-1-05	Adopt	3-1-05	731-005-0570	3-1-05	Adopt	4-1-05
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731-005-0015	3-1-05	Repeal	4-1-05	731-005-0600	3-1-05	Adopt	4-1-05
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731-005-0035	3-1-05	Repeal	4-1-05	731-005-0620	3-1-05	Adopt	4-1-05
731-005-0045	3-1-05	Repeal	4-1-05	731-005-0630	3-1-05	Adopt	4-1-05
731-005-0055	3-1-05	Repeal	4-1-05	731-005-0640	3-1-05	Adopt	4-1-05
731-005-0065	3-1-05	Repeal	4-1-05	731-005-0650	3-1-05	Adopt	4-1-05
731-005-0075	3-1-05	Repeal	4-1-05	731-005-0660	3-1-05	Adopt	4-1-05
731-005-0085	3-1-05	Repeal	4-1-05	731-005-0670	3-1-05	Adopt	4-1-05
731-005-0095	3-1-05	Repeal	4-1-05	731-005-0680	3-1-05	Adopt	4-1-05
731-005-0105	3-1-05	Repeal	4-1-05	731-005-0690	3-1-05	Adopt	4-1-05
731-005-0115	3-1-05	Repeal	4-1-05	731-005-0700	3-1-05	Adopt	4-1-05
731-005-0125	3-1-05	Repeal	4-1-05	731-005-0710	3-1-05	Adopt	4-1-05
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731-005-0145	3-1-05	Repeal	4-1-05	731-005-0730	3-1-05	Adopt	4-1-05
731-005-0155	3-1-05	Repeal	4-1-05	731-005-0740	3-1-05	Adopt	4-1-05
731-005-0165	3-1-05	Repeal	4-1-05	731-005-0750	3-1-05	Adopt	4-1-05
731-005-0175	3-1-05	Repeal	4-1-05	731-005-0760	3-1-05	Adopt	4-1-05
731-005-0185	3-1-05	Repeal	4-1-05	731-005-0770	3-1-05	Adopt	4-1-05
731-005-0195	3-1-05	Repeal	4-1-05	731-005-0780	3-1-05	Adopt	4-1-05
731-005-0205	3-1-05	Repeal	4-1-05	731-005-0790	3-1-05	Adopt	4-1-05
731-005-0215	3-1-05	Repeal	4-1-05	731-007-0010	3-1-05	Repeal	4-1-05
731-005-0225	3-1-05	Repeal	4-1-05	731-007-0020	3-1-05	Repeal	4-1-05
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731-005-0325	3-1-05	Repeal	4-1-05	731-007-0120	3-1-05	Repeal	4-1-05
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731-005-0355	3-1-05	Repeal	4-1-05	731-007-0150	3-1-05	Repeal	4-1-05
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731-007-0330	3-1-05	Adopt	4-1-05	731-147-0060	3-1-05	Adopt(T)	4-1-05
731-007-0340	3-1-05	Adopt	4-1-05	731-148-0010	3-1-05	Adopt(T)	4-1-05
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731-007-0360	3-1-05	Adopt	4-1-05	731-149-0010	3-1-05	Adopt(T)	4-1-05
731-007-0370	3-1-05	Adopt	4-1-05	732-005-0000	1-1-05	Amend	2-1-05
731-007-0380	3-1-05	Adopt	4-1-05	732-005-0005	1-1-05	Amend	2-1-05
731-007-0390	3-1-05	Adopt	4-1-05	732-005-0005(T)	1-1-05	Repeal	2-1-05
731-007-0400	3-1-05	Adopt	4-1-05	732-005-0010	1-1-05	Amend	2-1-05
731-010-0030	3-1-05	Suspend	4-1-05	732-005-0010(T)	1-1-05	Repeal	2-1-05
731-030-0010	11-17-04	Amend	1-1-05	732-005-0016	1-1-05	Amend	2-1-05
731-030-0020	11-17-04	Amend	1-1-05	732-005-0021	1-1-05	Amend	2-1-05
731-030-0030	11-17-04	Amend	1-1-05	732-005-0027	1-1-05	Amend	2-1-05
731-030-0040	11-17-04	Amend	1-1-05	732-005-0027(T)	1-1-05	Repeal	2-1-05
731-030-0050	11-17-04	Amend	1-1-05	732-005-0031	1-1-05	Amend	2-1-05
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731-030-0070	11-17-04	Repeal	1-1-05	732-005-0036	1-1-05	Amend	2-1-05
731-030-0080	11-17-04	Amend	1-1-05	732-005-0041	1-1-05	Amend	2-1-05
731-030-0090	11-17-04	Amend	1-1-05	732-005-0046	1-1-05	Amend	2-1-05
731-030-0100	11-17-04	Amend	1-1-05	732-005-0051	1-1-05	Amend	2-1-05
731-030-0110	11-17-04	Amend	1-1-05	732-005-0051(T)	1-1-05	Repeal	2-1-05
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731-030-0130	11-17-04	Amend	1-1-05	732-005-0061	1-1-05	Adopt	2-1-05
731-030-0140	11-17-04	Repeal	1-1-05	732-005-0066	1-1-05	Adopt	2-1-05
731-030-0150	11-17-04	Amend	1-1-05	732-005-0071	1-1-05	Adopt	2-1-05
731-030-0160	11-17-04	Amend	1-1-05	732-005-0076	1-1-05	Adopt	2-1-05
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731-080-0030	3-18-05	Adopt	5-1-05	732-010-0015	1-1-05	Amend	2-1-05
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731-080-0050	3-18-05	Adopt	5-1-05	732-010-0025	1-1-05	Amend	2-1-05
731-080-0060	3-18-05	Adopt	5-1-05	732-010-0030	1-1-05	Amend	2-1-05
731-080-0070	3-18-05	Adopt	5-1-05	732-010-0035	1-1-05	Amend	2-1-05
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734-010-0100	3-1-05	Repeal	4-1-05	735-020-0010	5-1-05	Amend	6-1-05
734-010-0110	3-1-05	Repeal	4-1-05	735-022-0040	5-1-05	Amend	6-1-05
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734-073-0110	3-18-05	Amend	5-1-05	735-070-0054	11-17-04	Amend	1-1-05
734-073-0120	3-18-05	Amend	5-1-05	735-070-0060	11-17-04	Amend	1-1-05
734-073-0130	3-18-05	Amend	5-1-05	735-070-0110	11-17-04	Amend	1-1-05
734-073-0140	3-18-05	Amend	5-1-05	735-070-0185	2-17-05	Amend(T)	4-1-05
734-074-0008	3-18-05	Amend	5-1-05	735-070-0190	11-17-04	Amend	1-1-05
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734-074-0045	3-18-05	Amend	5-1-05	735-074-0080	5-19-05	Amend	7-1-05
734-074-0051	3-18-05	Amend	5-1-05	735-074-0140	1-20-05	Amend	3-1-05
734-082-0005	3-18-05	Amend	5-1-05	735-074-0150	1-20-05	Amend	3-1-05
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734-082-0040	3-18-05	Amend	5-1-05	735-074-0170	1-20-05	Amend	3-1-05
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735-074-0220	11-17-04	Amend	1-1-05	735-160-0090	5-19-05	Repeal	7-1-05
735-074-0260	1-31-05	Amend	3-1-05	735-160-0093	5-19-05	Adopt	7-1-05
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735-090-0020	11-17-04	Amend	1-1-05	735-160-0100	5-19-05	Amend	7-1-05
735-090-0040	11-17-04	Amend	1-1-05	735-160-0110	5-19-05	Amend	7-1-05
735-090-0051	11-17-04	Adopt	1-1-05	735-160-0115	5-19-05	Adopt	7-1-05
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735-118-0030	2-16-05	Amend	4-1-05	736-010-0010	5-5-05	Amend	6-1-05
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735-140-0030	5-1-05	Repeal	6-1-05	736-010-0027	5-5-05	Amend	6-1-05
735-140-0040	5-1-05	Repeal	6-1-05	736-010-0030	5-5-05	Amend	6-1-05
735-140-0060	5-1-05	Repeal	6-1-05	736-010-0035	5-5-05	Amend	6-1-05
735-140-0070	5-1-05	Repeal	6-1-05	736-010-0040	5-5-05	Amend	6-1-05
735-140-0080	5-1-05	Repeal	6-1-05	736-010-0045	5-5-05	Am. & Ren.	6-1-05
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735-140-0110	5-1-05	Repeal	6-1-05	736-010-0060	5-5-05	Amend	6-1-05
735-140-0120	5-1-05	Repeal	6-1-05	736-010-0065	5-5-05	Amend	6-1-05
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736-015-0097	5-5-05	Am. & Ren.	6-1-05	801-040-0020	1-1-05	Amend	2-1-05
736-015-0100	5-5-05	Am. & Ren.	6-1-05	801-040-0030	1-1-05	Amend	2-1-05
736-015-0102	5-5-05	Repeal	6-1-05	801-040-0040	1-1-05	Amend	2-1-05
736-015-0105	5-5-05	Repeal	6-1-05	801-040-0050	1-1-05	Amend	2-1-05
736-015-0110	5-5-05	Am. & Ren.	6-1-05	801-040-0060	1-1-05	Repeal	2-1-05
736-015-0115	5-5-05	Repeal	6-1-05	801-040-0070	1-1-05	Amend	2-1-05
736-015-0120	5-5-05	Repeal	6-1-05	801-040-0090	1-1-05	Amend	2-1-05
736-015-0125	5-5-05	Repeal	6-1-05	801-040-0100	1-1-05	Amend	2-1-05
736-015-0130	5-5-05	Am. & Ren.	6-1-05	801-040-0150	1-1-05	Amend	2-1-05
736-015-0135	5-5-05	Am. & Ren.	6-1-05	801-040-0160	1-1-05	Amend	2-1-05
736-015-0140	5-5-05	Repeal	6-1-05	804-001-0002	2-14-05	Amend	3-1-05
736-015-0144	5-5-05	Am. & Ren.	6-1-05	804-001-0002	5-18-05	Amend	7-1-05
736-015-0146	5-5-05	Am. & Ren.	6-1-05	804-001-0014	2-14-05	Amend	3-1-05
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736-015-0155	5-5-05	Repeal	6-1-05	804-010-0000	2-14-05	Amend	3-1-05
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801-010-0060	1-1-05	Amend	2-1-05	808-004-0300	2-15-05	Amend	3-1-05
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808-008-0280	12-15-04	Amend(T)	1-1-05	812-003-0130	12-10-04	Adopt	1-1-05
808-008-0280	2-15-05	Amend	3-1-05	812-003-0140	12-10-04	Adopt	1-1-05
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812-004-0600	7-1-05	Amend	8-1-05	818-026-0035	2-1-05	Amend	3-1-05
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837-012-0540	12-13-04	Amend(T)	1-1-05	837-085-0260	4-1-05	Amend	5-1-05
837-012-0540	6-7-05	Amend	7-1-05	837-085-0270	4-1-05	Amend	5-1-05
837-012-0545	12-13-04	Amend(T)	1-1-05	837-085-0280	4-1-05	Amend	5-1-05
837-012-0545	6-7-05	Amend	7-1-05	837-085-0290	4-1-05	Amend	5-1-05
837-012-0555	1-13-05	Amend(T)	2-1-05	837-085-0300	4-1-05	Amend	5-1-05
837-012-0555	6-7-05	Amend	7-1-05	837-085-0305	4-1-05	Adopt	5-1-05
837-012-0610	2-15-05	Amend	3-1-05	837-085-0310	4-1-05	Amend	5-1-05
837-012-0610	6-7-05	Amend	7-1-05	837-085-0320	4-1-05	Amend	5-1-05
837-012-0615	2-15-05	Amend	3-1-05	837-085-0350	4-1-05	Amend	5-1-05
837-012-0620	2-15-05	Amend	3-1-05	839-003-0040	1-7-05	Amend	2-1-05

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839-009-0240	1-7-05	Amend	2-1-05	839-025-0750	4-18-05	Amend	5-1-05
839-009-0260	1-7-05	Amend	2-1-05	839-025-0750	5-2-05	Amend	6-1-05
839-010-0200	1-7-05	Adopt	2-1-05	839-025-0750	6-1-05	Amend	7-1-05
839-010-0205	1-7-05	Adopt	2-1-05	839-025-0750	6-21-05	Amend	8-1-05
839-010-0210	1-7-05	Adopt	2-1-05	839-025-0750	7-1-05	Amend	8-1-05
839-016-0000	3-1-05	Am. & Ren.	4-1-05	839-050-0050	2-11-05	Amend	3-1-05
839-016-0002	3-1-05	Am. & Ren.	4-1-05	839-050-0220	2-11-05	Amend	3-1-05
839-016-0003	3-1-05	Am. & Ren.	4-1-05	839-050-0360	2-11-05	Amend	3-1-05
839-016-0004	3-1-05	Am. & Ren.	4-1-05	845-001-0008	5-1-05	Amend	6-1-05
839-016-0006	3-1-05	Am. & Ren.	4-1-05	845-003-0670	5-1-05	Amend	6-1-05
839-016-0007	3-1-05	Am. & Ren.	4-1-05	845-004-0020	5-1-05	Amend	6-1-05
839-016-0008	3-1-05	Am. & Ren.	4-1-05	845-004-0101	1-1-05	Amend	1-1-05
839-016-0010	3-1-05	Am. & Ren.	4-1-05	845-005-0303	5-1-05	Amend	6-1-05
839-016-0013	3-1-05	Am. & Ren.	4-1-05	845-005-0312	1-1-05	Amend	2-1-05
839-016-0020	3-1-05	Am. & Ren.	4-1-05	845-005-0314	5-1-05	Amend	6-1-05
839-016-0025	3-1-05	Am. & Ren.	4-1-05	845-006-0434	5-1-05	Amend	6-1-05
839-016-0030	3-1-05	Am. & Ren.	4-1-05	845-006-0475	5-1-05	Amend	6-1-05
839-016-0033	3-1-05	Am. & Ren.	4-1-05	845-009-0010	7-1-05	Amend	7-1-05
839-016-0034	3-1-05	Am. & Ren.	4-1-05	845-009-0015	7-1-05	Amend	7-1-05
839-016-0035	3-1-05	Am. & Ren.	4-1-05	845-009-0135	5-1-05	Amend	6-1-05
839-016-0040	3-1-05	Am. & Ren.	4-1-05	845-009-0200	1-1-05	Amend	2-1-05
839-016-0043	3-1-05	Am. & Ren.	4-1-05	845-010-0905	12-1-04	Amend	1-1-05
839-016-0045	3-1-05	Am. & Ren.	4-1-05	845-010-0915	12-1-04	Amend	1-1-05
839-016-0050	3-1-05	Am. & Ren.	4-1-05	845-015-0143	6-1-05	Amend	7-1-05
839-016-0054	3-1-05	Am. & Ren.	4-1-05	845-015-0175	1-1-05	Amend	2-1-05
839-016-0060	3-1-05	Am. & Ren.	4-1-05	847-015-0025	1-27-05	Amend	3-1-05
839-016-0065	3-1-05	Am. & Ren.	4-1-05	847-035-0030	1-27-05	Amend	3-1-05
839-016-0080	3-1-05	Am. & Ren.	4-1-05	847-035-0030	4-21-05	Amend	6-1-05
839-016-0085	3-1-05	Am. & Ren.	4-1-05	847-050-0037	4-21-05	Amend	6-1-05
839-016-0090	3-1-05	Am. & Ren.	4-1-05	847-050-0041	1-27-05	Amend	3-1-05
839-016-0095	3-1-05	Am. & Ren.	4-1-05	848-001-0000	12-29-04	Amend	2-1-05
839-016-0100	3-1-05	Am. & Ren.	4-1-05	848-001-0005	12-29-04	Amend	2-1-05
839-016-0150	3-1-05	Am. & Ren.	4-1-05	848-005-0010	4-8-05	Amend	5-1-05
839-016-0155	3-1-05	Am. & Ren.	4-1-05	848-005-0030	12-29-04	Adopt	2-1-05
839-016-0200	3-1-05	Am. & Ren.	4-1-05	848-010-0010	12-29-04	Amend	2-1-05
839-016-0210	3-1-05	Am. & Ren.	4-1-05	848-010-0015	12-29-04	Amend	2-1-05
839-016-0220	3-1-05	Am. & Ren.	4-1-05	848-010-0020	12-29-04	Amend	2-1-05
839-016-0230	3-1-05	Am. & Ren.	4-1-05	848-010-0026	12-29-04	Amend	2-1-05
839-016-0240	3-1-05	Am. & Ren.	4-1-05	848-010-0033	12-29-04	Adopt	2-1-05
839-016-0300	3-1-05	Am. & Ren.	4-1-05	848-010-0035	12-29-04	Amend	2-1-05
839-016-0310	3-1-05	Am. & Ren.	4-1-05	848-010-0044	12-29-04	Adopt	2-1-05
839-016-0320	3-1-05	Am. & Ren.	4-1-05	848-010-0045	12-29-04	Repeal	2-1-05
839-016-0330	3-1-05	Am. & Ren.	4-1-05	848-010-0050	12-29-04	Repeal	2-1-05
839-016-0340	3-1-05	Am. & Ren.	4-1-05	848-010-0060	12-29-04	Repeal	2-1-05
839-016-0500	3-1-05	Am. & Ren.	4-1-05	848-010-0070	12-29-04	Repeal	2-1-05
839-016-0510	3-1-05	Am. & Ren.	4-1-05	848-010-0080	12-29-04	Repeal	2-1-05
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839-016-0540	3-1-05	Am. & Ren.	4-1-05	848-010-0110	12-29-04	Repeal	2-1-05
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839-016-0700	1-1-05	Amend	2-1-05	848-010-0120	12-29-04	Repeal	2-1-05
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848-020-0020	12-29-04	Repeal	2-1-05	852-005-0010	2-23-05	Amend	4-1-05
848-020-0030	12-29-04	Amend	2-1-05	852-010-0015	2-23-05	Amend	4-1-05
848-020-0040	12-29-04	Amend	2-1-05	852-010-0020	2-23-05	Amend	4-1-05
848-020-0050	12-29-04	Amend	2-1-05	852-010-0023	2-23-05	Amend	4-1-05
848-020-0060	12-29-04	Amend	2-1-05	852-010-0027	2-23-05	Amend	4-1-05
848-030-0000	12-29-04	Amend	2-1-05	852-010-0080	7-1-05	Amend	8-1-05
848-030-0010	12-29-04	Amend	2-1-05	852-020-0035	4-8-05	Adopt	5-1-05
848-040-0000	12-29-04	Repeal	2-1-05	852-050-0006	7-1-05	Amend	8-1-05
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848-040-0030	12-29-04	Repeal	2-1-05	852-070-0030	2-23-05	Amend	4-1-05
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848-040-0050	12-29-04	Repeal	2-1-05	855-001-0000	2-7-05	Amend	3-1-05
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848-040-0105	12-29-04	Adopt	2-1-05	855-041-0040	4-14-05	Amend	5-1-05
848-040-0110	12-29-04	Adopt	2-1-05	855-041-0060	4-14-05	Amend	5-1-05
848-040-0115	12-29-04	Adopt	2-1-05	855-041-0208	6-28-05	Adopt(T)	8-1-05
848-040-0120	12-29-04	Adopt	2-1-05	855-041-0600	3-1-05	Adopt	3-1-05
848-040-0125	12-29-04	Adopt	2-1-05	855-041-0610	3-1-05	Adopt	3-1-05
848-040-0130	12-29-04	Adopt	2-1-05	855-041-0620	3-1-05	Adopt	3-1-05
848-040-0135	12-29-04	Adopt	2-1-05	855-050-0037	5-14-05	Adopt	5-1-05
848-040-0140	12-29-04	Adopt	2-1-05	855-050-0038	5-14-05	Adopt	5-1-05
848-040-0145	12-29-04	Adopt	2-1-05	855-050-0039	5-14-05	Adopt	5-1-05
848-040-0150	12-29-04	Adopt	2-1-05	855-050-0041	5-14-05	Adopt	5-1-05
848-040-0155	12-29-04	Adopt	2-1-05	855-050-0042	5-14-05	Adopt	5-1-05
848-040-0160	12-29-04	Adopt	2-1-05	855-050-0043	5-14-05	Adopt	5-1-05
848-040-0165	12-29-04	Adopt	2-1-05	855-110-0007	3-1-05	Amend	3-1-05
848-040-0170	12-29-04	Adopt	2-1-05	855-110-0010	3-1-05	Amend	3-1-05
848-045-0010	12-29-04	Adopt	2-1-05	860-011-0001	12-30-04	Amend	2-1-05
848-045-0020	12-29-04	Adopt	2-1-05	860-011-0010	12-30-04	Amend	2-1-05
848-050-0000	12-29-04	Repeal	2-1-05	860-011-0011	12-30-04	Adopt	2-1-05
848-050-0010	12-29-04	Repeal	2-1-05	860-011-0012	12-30-04	Adopt	2-1-05
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848-050-0030	12-29-04	Repeal	2-1-05	860-011-0020	12-30-04	Repeal	2-1-05
848-050-0100	12-29-04	Adopt	2-1-05	860-011-0022	12-30-04	Am. & Ren.	2-1-05
848-050-0110	12-29-04	Adopt	2-1-05	860-011-0023	12-30-04	Repeal	2-1-05
848-050-0120	12-29-04	Adopt	2-1-05	860-011-0024	12-30-04	Repeal	2-1-05
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850-010-0225	6-10-05	Amend	7-1-05	860-011-0080	12-30-04	Amend	2-1-05
850-020-0000	2-4-05	Amend	3-1-05	860-012-0007	12-1-04	Amend	1-1-05
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860-014-0065	12-30-04	Amend	2-1-05	860-034-0110	12-1-04	Amend	1-1-05
860-014-0070	12-30-04	Amend	2-1-05	860-034-0140	12-1-04	Amend	1-1-05
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860-014-0092	12-30-04	Amend	2-1-05	860-034-0300	12-30-04	Amend	2-1-05
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860-016-0050	2-2-05	Amend	3-1-05	860-034-0600	12-30-04	Amend	2-1-05
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860-021-0036	12-30-04	Amend	2-1-05	860-036-0095	12-30-04	Amend	2-1-05
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860-021-0037	12-30-04	Amend	2-1-05	860-036-0097	12-30-04	Amend	2-1-05
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860-032-0095	12-30-04	Amend	2-1-05	860-037-0110	12-1-04	Amend	1-1-05
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860-033-0537	12-1-04	Amend	1-1-05	863-015-0060	7-1-05	Amend(T)	7-1-05
860-033-0540	12-1-04	Amend	1-1-05	863-015-0061	5-6-05	Adopt	6-1-05
860-033-0545	12-1-04	Amend	1-1-05	863-015-0062	5-6-05	Adopt	6-1-05
860-034-0030	12-1-04	Amend	1-1-05	863-015-0065	5-6-05	Amend	6-1-05
860-034-0090	12-1-04	Amend	1-1-05	863-015-0075	5-6-05	Amend	6-1-05
860-034-0095	12-1-04	Amend	1-1-05	863-015-0076	5-6-05	Adopt	6-1-05
860-034-0095	12-30-04	Amend	2-1-05	863-015-0080	5-6-05	Amend	6-1-05

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863-015-0175	5-6-05	Amend	6-1-05	918-098-1055	7-7-05	Am. & Ren.(T)	8-1-05
863-015-0195	5-6-05	Amend	6-1-05	918-098-1060	7-7-05	Am. & Ren.(T)	8-1-05
863-015-0215	5-6-05	Amend	6-1-05	918-098-1065	7-7-05	Am. & Ren.(T)	8-1-05
863-015-0260	5-6-05	Amend	6-1-05	918-098-1070	7-7-05	Am. & Ren.(T)	8-1-05
863-025-0015	5-6-05	Amend	6-1-05	918-098-1075	7-7-05	Am. & Ren.(T)	8-1-05
863-025-0020	5-6-05	Amend	6-1-05	918-098-1080	7-7-05	Am. & Ren.(T)	8-1-05
863-025-0025	5-6-05	Amend	6-1-05	918-098-1085	7-7-05	Am. & Ren.(T)	8-1-05
863-025-0030	5-6-05	Amend	6-1-05	918-098-1200	7-7-05	Am. & Ren.(T)	8-1-05
863-025-0035	5-6-05	Amend	6-1-05	918-098-1205	7-7-05	Am. & Ren.(T)	8-1-05
863-025-0040	5-6-05	Amend	6-1-05	918-098-1210	7-7-05	Am. & Ren.(T)	8-1-05
863-025-0045	5-6-05	Amend	6-1-05	918-098-1215	7-7-05	Am. & Ren.(T)	8-1-05
863-025-0050	5-6-05	Amend	6-1-05	918-098-1220	7-7-05	Am. & Ren.(T)	8-1-05
863-025-0055	5-6-05	Amend	6-1-05	918-098-1300	7-7-05	Am. & Ren.(T)	8-1-05
863-025-0070	5-6-05	Amend	6-1-05	918-098-1305	7-7-05	Am. & Ren.(T)	8-1-05
918-001-0006	4-1-05	Adopt	5-1-05	918-098-1310	7-7-05	Am. & Ren.(T)	8-1-05
918-001-0036	5-1-05	Amend	6-1-05	918-098-1315	7-7-05	Am. & Ren.(T)	8-1-05
918-008-0030	4-1-05	Amend	5-1-05	918-098-1320	7-7-05	Am. & Ren.(T)	8-1-05
918-008-0075	7-7-05	Adopt(T)	8-1-05	918-098-1325	7-7-05	Am. & Ren.(T)	8-1-05
918-008-0080	7-7-05	Adopt(T)	8-1-05	918-098-1330	7-7-05	Am. & Ren.(T)	8-1-05
918-008-0085	7-7-05	Adopt(T)	8-1-05	918-098-1400	7-7-05	Am. & Ren.(T)	8-1-05
918-008-0090	7-7-05	Adopt(T)	8-1-05	918-098-1410	7-7-05	Am. & Ren.(T)	8-1-05
918-008-0095	7-7-05	Adopt(T)	8-1-05	918-098-1420	7-7-05	Am. & Ren.(T)	8-1-05
918-008-0105	7-7-05	Adopt(T)	8-1-05	918-098-1430	7-7-05	Am. & Ren.(T)	8-1-05
918-008-0110	7-7-05	Adopt(T)	8-1-05	918-098-1440	7-7-05	Am. & Ren.(T)	8-1-05
918-008-0115	7-7-05	Adopt(T)	8-1-05	918-098-1450	7-7-05	Adopt(T)	8-1-05
918-008-0120	7-7-05	Adopt(T)	8-1-05	918-098-1460	7-7-05	Am. & Ren.(T)	8-1-05
918-020-0090	7-7-05	Amend(T)	8-1-05	918-098-1470	7-7-05	Adopt(T)	8-1-05
918-030-0030	5-1-05	Amend	6-1-05	918-098-1480	7-7-05	Adopt(T)	8-1-05
918-030-0400	5-1-05	Adopt	6-1-05	918-098-1500	7-7-05	Am. & Ren.(T)	8-1-05
918-030-0420	5-1-05	Adopt	6-1-05	918-098-1600	7-7-05	Am. & Ren.(T)	8-1-05
918-030-0430	5-1-05	Adopt	6-1-05	918-098-1610	7-7-05	Am. & Ren.(T)	8-1-05
918-030-0490	5-1-05	Adopt	6-1-05	918-098-1620	7-7-05	Am. & Ren.(T)	8-1-05
918-090-0000	7-7-05	Amend(T)	8-1-05	918-098-1630	7-7-05	Am. & Ren.(T)	8-1-05
918-090-0010	7-7-05	Amend(T)	8-1-05	918-098-1900	7-7-05	Adopt(T)	8-1-05
918-090-0200	7-7-05	Amend(T)	8-1-05	918-225-0240	7-12-05	Amend(T)	8-1-05
918-090-0210	7-7-05	Amend(T)	8-1-05	918-225-0430	7-12-05	Amend(T)	8-1-05
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918-098-0040	7-7-05	Suspend	8-1-05	918-251-0030	7-7-05	Suspend	8-1-05
918-098-0050	7-7-05	Suspend	8-1-05	918-251-0040	7-7-05	Suspend	8-1-05
918-098-0405	7-7-05	Suspend	8-1-05	918-261-0031	7-1-05	Adopt	8-1-05
918-098-0422	7-7-05	Suspend	8-1-05	918-281-0000	7-7-05	Amend(T)	8-1-05
918-098-0423	7-7-05	Suspend	8-1-05	918-281-0010	7-7-05	Amend(T)	8-1-05
918-098-0440	7-7-05	Suspend	8-1-05	918-281-0020	7-7-05	Amend(T)	8-1-05
918-098-0450	7-7-05	Suspend	8-1-05	918-281-0030	7-7-05	Suspend	8-1-05
918-098-0460	7-7-05	Suspend	8-1-05	918-281-0040	7-7-05	Suspend	8-1-05
918-098-1000	7-7-05	Adopt(T)	8-1-05	918-281-0050	7-7-05	Suspend	8-1-05
918-098-1005	7-7-05	Am. & Ren.(T)	8-1-05	918-281-0060	7-7-05	Suspend	8-1-05
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918-098-1015	7-7-05	Am. & Ren.(T)	8-1-05	918-282-0110	4-1-05	Amend	5-1-05
918-098-1025	7-7-05	Adopt(T)	8-1-05	918-282-0230	7-1-05	Amend	7-1-05
918-098-1030	7-7-05	Am. & Ren.(T)	8-1-05	918-282-0365	6-10-05	Amend(T)	7-1-05
918-098-1040	7-7-05	Adopt(T)	8-1-05	918-305-0005	4-1-05	Amend	1-1-05
918-098-1042	7-7-05	Adopt(T)	8-1-05	918-305-0010	4-1-05	Amend	1-1-05
918-098-1045	7-7-05	Am. & Ren.(T)	8-1-05	918-305-0030	4-1-05	Amend	1-1-05



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918-305-0105	4-1-05	Adopt	1-1-05	918-515-0415	4-1-05	Amend	5-1-05
918-305-0110	4-1-05	Amend	1-1-05	918-525-0065	3-1-05	Amend	4-1-05
918-305-0120	4-1-05	Amend	1-1-05	918-525-0070	3-1-05	Amend	4-1-05
918-305-0130	4-1-05	Amend	1-1-05	918-525-0080	3-1-05	Amend	4-1-05
918-305-0150	4-1-05	Amend	1-1-05	918-525-0230	3-1-05	Repeal	4-1-05
918-305-0160	4-1-05	Amend	1-1-05	918-525-0250	3-1-05	Amend	4-1-05
918-305-0165	4-1-05	Amend	1-1-05	918-525-0450	3-1-05	Amend	4-1-05
918-305-0180	4-1-05	Amend	1-1-05	918-525-0510	3-1-05	Amend	4-1-05
918-305-0250	4-1-05	Amend	1-1-05	918-550-0000	5-1-05	Adopt	6-1-05
918-305-0270	4-1-05	Amend	1-1-05	918-550-0010	5-1-05	Adopt	6-1-05
918-305-0280	4-1-05	Adopt	1-1-05	918-550-0100	5-1-05	Adopt	6-1-05
918-305-0290	4-1-05	Adopt	1-1-05	918-550-0120	5-1-05	Adopt	6-1-05
918-305-0300	4-1-05	Adopt	1-1-05	918-550-0140	5-1-05	Adopt	6-1-05
918-305-0310	4-1-05	Adopt	1-1-05	918-550-0160	5-1-05	Adopt	6-1-05
918-305-0320	4-1-05	Adopt	1-1-05	918-550-0180	5-1-05	Adopt	6-1-05
918-306-0005	4-1-05	Amend	1-1-05	918-550-0200	5-1-05	Adopt	6-1-05
918-308-0110	7-7-05	Suspend	8-1-05	918-550-0600	5-1-05	Adopt	6-1-05
918-400-0230	7-7-05	Suspend	8-1-05	918-674-0095	4-1-05	Amend	5-1-05
918-400-0270	4-1-05	Amend	5-1-05	918-690-0340	7-7-05	Suspend	8-1-05
918-400-0380	4-1-05	Amend	5-1-05	918-690-0350	7-7-05	Suspend	8-1-05
918-400-0455	4-1-05	Amend	5-1-05	918-690-0420	4-1-05	Amend	1-1-05
918-400-0465	4-1-05	Amend	5-1-05	918-695-0010	4-1-05	Amend	5-1-05
918-400-0525	4-1-05	Amend	5-1-05	918-695-0038	4-1-05	Amend	5-1-05
918-400-0630	4-1-05	Amend	5-1-05	918-695-0400	7-7-05	Amend(T)	8-1-05
918-400-0740	4-1-05	Amend	5-1-05	918-695-0410	7-7-05	Amend(T)	8-1-05
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918-460-0015	7-12-05	Amend(T)	8-1-05	951-002-0001	11-26-04	Adopt	1-1-05
918-480-0003	3-28-05	Adopt(T)	5-1-05	951-002-0005	11-26-04	Adopt	1-1-05
918-480-0005	3-28-05	Amend	5-1-05	951-002-0010	11-26-04	Adopt	1-1-05
918-480-0010	3-28-05	Amend	5-1-05	951-002-0020	11-26-04	Adopt	1-1-05
918-500-0010	5-1-05	Amend	6-1-05	951-003-0000	11-26-04	Adopt	1-1-05
918-500-0021	4-1-05	Adopt	5-1-05	951-003-0001	11-26-04	Adopt	1-1-05
918-500-0100	7-5-05	Amend	8-1-05	951-003-0005	11-26-04	Adopt	1-1-05
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